



## A judgment that must be taken in the right spirit

“*Union of India vs Rajendra N. Shah*” judgment delivered by the Supreme Court of India struck down the 97th Constitutional Amendment albeit in a limited manner.

### The background

1. The 97th Constitutional Amendment came into effect in 2012 and brought about many changes to the legal regime of cooperative societies. The amendment added “cooperative societies” to the protected forms of association under Article 19(1)(c), elevating it to a fundamental right.
2. It also inserted Part IXB in the Constitution which laid down the terms by which cooperative societies would be governed, in more granular detail than was palatable.
3. The Constitution can be amended only by the procedure provided in Article 368. The amendment procedure requires a majority of the total strength of each of the Houses of Parliament and a two-thirds majority of those present and voting.
4. A proviso to the Article lists out some articles and chapters of the Constitution, which can be amended only by a special procedure. The special procedure requires that the amendment will also have to be ratified by the legislatures of half of the States.
5. It is precisely on the grounds of violation of this additional requirement that the 97th Constitutional Amendment was challenged.

### The cooperative sector

1. The Seventh Schedule of the Constitution confers power on the State legislatures to make laws pertaining to incorporation, regulation and the winding up of cooperative societies.
2. But the Union government has been acquiring incrementally greater control of cooperative societies over the years. Cooperative banks have been brought under the purview of the Reserve Bank of India.
3. The political intent of the Union Government for more active involvement in the cooperative sector is also apparent from the recently established Union Ministry for Cooperation.



4. The court took the example of the 73rd and 74th Amendments which introduced the chapters on panchayats and municipalities, respectively. Those amendments, similar in impact on the legislative power of the States, had been passed by the special procedure involving ratification by State legislatures.
5. The court noted that the procedure had not been followed in this case but clarified that the judgment is confined to the procedural lacuna and does not go into the question of the amendment being violative of the basic structure of the Constitution.

### **Making a distinction**

1. Having found this lapse in the procedure, the judgment makes a distinction between cooperative societies operating in one State and multi-State cooperative societies and holds that while a ratification by half the state legislatures would have been necessary insofar as it applies to cooperative societies in one State, they chose not to go deeper into the question of whether the amendment also required ratification in respect of the application to multi-State cooperative societies.
2. The minority opinion considered that the provisions of the newly added part which pertain to multi-State cooperative societies could not exist independently of the parts which pertain to cooperative societies, and hence the whole amendment should be struck down.
3. In theory, it would seem simple enough. The amendment has only been struck down on account of the right procedure not having been followed and another amendment can be brought, but this time, going through the rigour of ratification by State legislatures.

### **A sector best left alone**

1. The cooperative sector has always been in the domain of the States or provinces. The organising principles and mechanism of these cooperatives differ from area to area and depend on the industry or crop which forms the fulcrum of the cooperative.
2. Homogeneity in this area would only result in the creation of round holes in which square pegs no longer fit. They also would not really serve to break the control some political interests have taken over cooperatives.



3. It is best that the Government takes this judgment in the right spirit and stays away from further meddling in the cooperative sector, notwithstanding the creation of the new Ministry.

## Japanese education spells holistic development

Investment in education yields both private and social returns. Private returns, like wages, accrue to individuals. Social returns accrue to society. Textbook economics suggests that private returns rise with one's level of education, but social returns peak at the elementary levels. For when educated people follow rules such as queuing, using washrooms, washing hands, protecting public property, etc. the collective returns from such actions generate a huge social value such as cleaner, healthier and disciplined societies.

### Education and social Values:

1. Education is everything that expands our capabilities — as individuals and as a society. The novel coronavirus pandemic has given us an opportunity to re-evaluate how our schools should expand our capabilities.
2. While academic prowess in math, science and language is essential, what about the issue of household chores? Or connect with the community or nature?
3. Does learning household chores expand one's capabilities? For if people do not know how to keep their spaces clean, cook their own food, do their laundry, it just needs a shock like a COVID-19 pandemic to occur and for a society dependent on the labour of others to feel incredibly disrupted.
4. Add to it shortages of essential supplies and overstretched public resources, and social disruption is inevitable. So, how can we prepare for the future? The answer: through our elementary schools. Can we learn from another country? Yes. Probably, Japan.

### Learning from Japan:

Throughout the novel coronavirus pandemic, schools and public spaces have remained fairly open in Japan due to people's responsible behaviour. As India prepares to re-open its schools along with the newly adopted New Education Policy, we can borrow some insights from the Japanese system.



## Non-cognitive elements

1. Japan ranks among the top in the Programme for International Student Assessment (PISA) which evaluates students on their prowess in core academic subjects. However, another important aspect of the Japanese curriculum is its emphasis on non-cognitive elements.
2. Japan's Ministry of Education, Culture, Sports, Science and Technology (MEXT) explains 'Chi-Toku-Tai' as the defining feature of Japanese schooling.
3. Chi, which translates to 'know' lay an emphasis on building strong academic abilities. Toku translates to 'virtue' and refers to mindfulness, self-discipline, and cooperative abilities. And last, Tai translates to 'body and refers to physical and mental well-being.
4. The Japanese education philosophy transitioned from an extremely examination-focused, rote memorisation-based approach to the 'Chi-Toku-Tai' approach in the 1970s.
5. The elementary school curriculum was later supplemented with subjects, namely moral education, integrated studies and special activities.
6. Together, seen as a 'zest for life' approach, this philosophy focuses on holistic ability extending beyond academic prowess to include 'kansei' which roughly translates to 'sensitivity'.
7. This approach aims at developing a knowledgeable mind which can appreciate beauty and nature, hold a sense of justice, and respect life and labour.

## Shaping social behaviour

1. Moral education includes norms that define socially responsible and considerate behaviour towards everyone including nature. For example, as a summer project, students venture out in nature observing beetles, cicadas, crickets and sketching or noting their characteristics in their 'insect diary'. Students as young as the first-graders take turns to clean their classrooms, washrooms, serve school lunches, and water the plants at school.
2. When students cross a pedestrian crossing while making a driver wait, they bow in a 'thank you' to express gratitude. While these are some examples, the



essence is that the elementary school curriculum can play a tremendous role in building courteous and mindful societies.

3. Such a system reaps several benefits. As students do various chores, it builds respect for labour and humility at a young age. It trains them to undertake routine jobs in an efficient manner and encourages responsible and mindful behaviour towards the community.
4. Think of how the Japanese fans celebrated their victory in the 2018 football World Cup opening match against Colombia — by cleaning up their rows in the stadium in Russia.

### **Finding solutions**

1. Integrated studies encompass experiential learning and independent thinking where students identify problems in their local communities and think of solutions. For example, children may create a disaster preparedness map based on their own research.
2. Seniors from the community are invited to share insights about the community's history. Activities such as these integrate schools with the community.
3. If we can train our children in identifying problems in their local communities such as health ailments, pollution, waste disposal, etc. and coach them in developing solution road maps, the gains to both sides can be immense.
4. The special activities hour encourages students to consider the school as a "society". These include activities such as organising events, maintaining the library, etc.
5. After task completion, students are made to reflect on the problems they experienced in the process such as wastage, conflict, etc. and the ways to resolve them. This inculcates the practice of 'kaizen' — the Japanese philosophy of continuous improvement.
6. Finally, another notable aspect that defines Japanese society and the education system is 'collectivism'. Unlike the West, Japan is a collectivist society. Working as a group and group harmony is fundamental to this society. While this has its own limitations, the general belief that one wins only when the group wins generates equitable and united societies.



## It's about unity

For us, volunteering for a treasure hunt activity involving third graders in Tokyo gave us an interesting insight into collectivism. Teams had to find the hidden treasure; however, the primary target was not the treasure but to keep the unit together. Teams could only move forward when all their members were together and agreed on the next strategy. So, if there were students on wheelchairs or slow otherwise, the group respectfully waited for them to arrive.

## Oxygen for fiscal federalism

A special rate could be levied for a specified period in order to raise additional resources to meet the challenges posed by COVID-19 with the approval of the GST Council. These are some urgent necessary measures that are to be taken for pumping oxygen to fiscal federalism in India.

## Disregarding an obligation

1. At the time of introducing the new indirect tax regime, the Goods and Services Tax (GST) law assured States a 14% increase in their annual revenue for five years (up to July 1, 2020).
2. But the Union government has deviated from the statutory promise and has been insisting that States avail themselves of loans. Kerala is entitled to a GST compensation of ₹4,041 crores for the financial year 2020-21. But the Union government has been disregarding this obligation.
3. The future interest liability of these loans should not be placed on the shoulders of the States. Moreover, the borrowing limit of States, as per the Fiscal Responsibility and Budget Management Act, should not be built into these loans. This policy needs clarity.
4. Last year, the Union government increased the borrowing ceiling of the States from 3% to 5% for FY 2020-21. But conditions are attached to 1.5% of the 2% of increased ceiling.
5. It is the States which have to bear the burden of welfare and relief measures during the pandemic. Attaching conditions for expenditure out of the borrowed amount would clip the wings of the States and goes against the principle of cooperative federalism.



## Urgent measures

1. The present compensation period will end in 2021-22. Beyond this period, it is going to be very difficult to convince the Union government to provide compensation as there is no constitutional obligation to do so to the States.
2. This will create serious financial stress to the States, especially to those which require higher compensation.
3. As per Section 4(f) of Article 279A, the Union government can consider introducing any special rate to raise additional resources during the pandemic (any natural calamity or disaster).
4. Section 4(f) says: “The Goods and Services Tax Council shall make recommendations to the Union and the States on — Any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster”. Article 279A was inserted through the Constitution (One Hundred and First Amendment) Act.