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Corporatisation of Agriculture Understanding the Relevance of Farmer Producer Companies in Backdrop of the New Farm Bills: A Solution

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ABSTRACT

As the country stands in midst of massive revolt and push-back from small and marginal farmers against steamrolling of three ambitious farm bills by the Indian Parliament aimed at revamping, modernising and building self-sufficiency in the farming sector, this article attempts to seek solutions. It analyses the potentialities and restraints of corporatizing the agriculture sector in the country and discusses if, organisation of FPOs in the form of Producer Companies under the Companies Act, 2013 can be seen as a viable solution to the socio-economic grievances faced by the farmers.

Keywords: *Farmer Producer Company, Corporatization of Agriculture, Small and Marginal Farmers, Farmer Organisations, Farm Bill.*

I. BACKGROUND

India is a 'country of farmers' with a vibrant heritage of multifaceted farming produce. A significant share[2] of the Indian population continues to be dependent on farming and allied activities for their sustenance and livelihood and their aggregate domestic production accounts for seven percent of the global agricultural produce, second, only to China in terms of its global contribution.[3] However, over the years, this sector has experienced a steady decline in participation and stagnation in economic growth[4] due to various reasons like growth of the

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[2]World Bank, Employment in Agriculture India 2011-20, World Development Indicator (Dec. 16, 2020) https://databank.worldbank.org/home.aspx.

According to ILO Estimates, between the year 2011-20, average 45.03 percent of total Indian Population was employed in agriculture, which stood at 41.9% in the year 2019-20.

[3]UN Food and Agricultural Organisation, Part 3: Feeding the World, Statistical Yearbook of the Food and Agricultural Organization for the United Nations, Table 20, 158(2013) http://www.fao.org/3/i3107e/i3107e00.htm.

[4]Ministry of Statistics & Programme Implementation, Statement 4: Provisional Estimates of GVA at Basic Price by Economic Activity, Press Note on Provisional Estimates of Annual National Income 2019-2020 and Quarterly Estimates of Gross Domestic Product for the Fourth Quarter (Q4) of 2019-2020, 6 (May 29, 2020) http://mospi.nic.in/sites/default/files/press_release/PRESS%20NOTE%20PE%20and%20Q4%20estimates%20o

service sector, lack of innovation, decline in size of landholding etc., to name a few.

Keeping the two-fold objective of 'doubling farmers' income by 2022' and 'one nation-one market' in sight, the Parliament on Sept. 20, 2020 passed three new farm bills[5] to supplement and innovate the existing structure of marketing (or, domestic sale) of farmers' produce, allowing the farmers to sell their produce outside the infrastructure of APMC markets in their vicinity, to anyone or anywhere in the country. The Bills however suffered immense opposition from farmer of all strata due to one primary reasons: the apprehended effect of wide bargaining-capacity mismatch between the farmers and prospective buyers of their produce in the open market combined with the lack of floor pricing.

In an attempt to find external solution to the issue of bargaining capacity faced by small and marginal farmers under the new farms' laws, this paper, studies the legal structure of Farmer Producer Companies (hereinafter, **'FPCs'**) under the Indian Companies Act, 2013 (hereinafter, the **'Act'** or the **'Companies Act')** and analyses its suitability, in light of the existing executive policies and schemes, in organising farmers as a corporate entity to build collective capacity for price resilience and/or makes suggestions for amendments in the existing legal structure to achieve the same.

II. Farmer Producer Organisations (or FPOs): Cooperatives to Corporates

The farming sector in India is distinguished by its un-organised, fragmented and highly production-oriented nature. Nearly eighty-five percent[6] of the Indian farmers, are poor, small, marginal or landless, with highly fragmented land-holding and heterogeneous cropping and production patterns. The process of organising these farmers in the form of collectives called Farmer Producer Organisations (FPOs), has often been seen as the most effective solution to most challenges faced by farmers.

Following suit of the practices followed in European Union and other developed countries in the 19th century, attempts were made by the government to organise farmers into FPOs in the form of Primary Producer Cooperative Societies, trusts, self-help groups etc. to make them income-oriented and by providing better access to market, material, capital and technology.

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f%20GDP.pdf.

[5]Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, No. 21 (2020). The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, No. 20 (2020). The Essential Commodities (Amendment) Act, No. 22 (2020).

[6]National Informatics Centre, Table: Number and Area of Holding by Size Class, Agricultural Census 2015-16, http://agcensus.dacnet.nic.in/NL/natt1table1.aspx. Small and Marginal farmers mean farmers that cultivate as owners, tenants or croppers, area less than 2 hectare and 1 hectare respectively

However, unlike the developed countries where these entities became self-sufficient, FPOs in India were influenced by political interference, apathy, poor marketing strategy, capital shortage, bureaucratic lethargy and stagnation.[7] Inspired by the failure of these FPOs, a new form of FPO by the name of Producer Companies was developed as a hybrid between cooperative societies and private limited companies, to provide the farmers, benefit of working in cooperation combined with the benefit of economic growth and autonomy of corporatisation.

1. FPCs: MEANING

'Producer Companies' is generally understood as a form of company, established by a group of ten or more, individual producers or two or more producer institutions or a combination of ten or more individuals and institutions engaged in primary production and related activities. The Companies Act, 2013 defines it as a corporate body having objects or activities stated specified in Sec 378B of the Companies Act, 2013 and registered as a producer company under this act or the previous company law. [8] The concept of producer companies was first introduced in the year 2002, by way of a legislative amendment drafted on the basis of recommendations of a high-level committee chaired by Professor Dr. Y.K. Alagh, that added Part IXA to The Companies Act, 1956. Currently, provisions of Part XXIA (378A- ZU) of Companies Act, 2013, governs the aforesaid

The term 'producer company' includes companies established for both, farm and non- farm purposes like handicraft, animal husbandry, pisciculture etc. A producer company formed by members or institutions engaged in farming activities is called a Farmer Producer Company or an FPC.

2. FPCs: BENEFITS AND HIGHLIGHTS

Farmers Producer Companies or the FPCs are considered as an effective organisational structure to build capacity amongst farmers due to its unique legal position and characteristics as mentioned below:

- **HYBRIDISED FEATURES:**

FPCs incorporated under the Companies Act are a hybrid between the features of a 'cooperative society' under relevant state laws and a 'private limited company' under the Companies Act.

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[7] Rehana Noor, Kalyan Sundaram M. et al, India's Journey of Corporative Act to Producer Company Act; How Sustainable the Farmers' Producer Organization Model Has Been So Far? Journal of Social and Political Sciences Vol.3, 277, 278 (March 2020).

[8] Part XXIA, Section 378A(l) of The Companies Act, as amended by Sec. 52 and 66 by the Companies (Amendment), Act (Act 29 0f 2020), effective from Feb. 11, 2021 via MCA Notification S.O 644(E). Note: Earlier, governed by Part IX-A of the Companies Act, 1956.

- **PRINCIPLES OF MUTUAL ASSISTANCE:**[9]

A farmer producer company if formed on the basis of principles of mutual cooperation and mutual benefit of all its member. The Articles of Association of the is required by law to specifically incorporate provision for voluntary membership, single vote, Board's administration, limited return, provision for members' education and synergy with organisations working on similar principles. The Act empowers the Registrar to strike off names of producer companies that fail to maintain, the principles so enumerated.

- **EASE OF FORMATION AND MEMBERSHIP:**[10]

A farmer producer company can be formed by a group of individual farmers; or by producer institution like companies, cooperatives, trusts, association of people etc whether incorporated or not; or by a combination individuals and institutions engaged in farming or related activities without any cap on the maximum number of members. An existing interstate cooperative society can also be converted into a producer company, with ease.

- **PROFESSIONAL MANAGEMENT:**[11]

A producer company operates on the principle of separation of ownership and management. While, ownership of the company lies in the hand of farmer-members, its management is vested with the Chief Executive Officer acting under the control and supervision a Board of Directors (or BOD) appointed by the members for a fixed period. The Act also contains provisions for appoint of expert directors on the Board.

- **SPECIFIED OBJECTIVES:**[12]

A producer company undertakes activities primarily dealing with the produce of its active member for fulfilment of any or all of the objects enumerated under the Act, either directly or through other facilitation institution. The object must be clearly stated in the memorandum of association of the company.

- **ONE MEMBER, ONE VOTE:**[13]

In order to ensure inclusion and participation, the Companies Act has made the provision for 'one member, on vote', whereby each member has equal say in the business of an FPC, irrespective of the number of shares held by him/her. Except in cases of producer companies

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[9] The Companies Act, 18 of 2013, § 378A(f), 378G, 378ZP (2013).
[10] *Id.*, § 378C, § 378ZP.
[11] *Id.*, § 378O, 378P, § 378R, § 378P W, § 378X
[12]*Id.*, § 378B.
[13] *Id.* § 378D, § 378Z

having only producer institutions as members, where voting is conducted proportionally on the basis of members' respective business contribution. Law permits a producer companies to restrict certain matters for consideration, only by active members of the company by making provisions for the same in their articles of association.

- **MEMBERSHIP BENEFITS:**[14]

All members of an FPC initially receive a fixed price for their produce as decided by the Board and the remaining withheld price in cash, kind or equity shares in proportion to their supply. Besides the limited return on capital contribution, they may be given bonus issue and/or patronage bonus, out of surplus, if any, remaining after payment of returns and transfer to reserves.

- **LIMITED LIABILITY:**[15]

A producer company shall always be formed as a company limited by share capital, where lability of its members is limited to the extent of amount unpaid on shares held by them, thus even if the company becomes insolvent, the personal estate of its members will not be attached towards payment of its liabilities.

- **RISK MANAGEMENT:**[16]

The company act, provides protection the producer company from unintended takeover by making its shares transferable only upon prior approval of the Board and only to other active members of the company and at par value. To ensure risk management and financial safety, the act requires transfer of a fixed sum to general reserve of the company either out of years surplus or by member contribution in case there is no surplus. The Central Government has enumerated a small list of 'safe' securities to which alone this sum can be invested.

- **NON-ADVERSARIAL DISPUTE RESOLUTION**:[17]

All internal disputes within the company, with respect to the formation, management and business of the company shall be settled by means of arbitration or conciliation.

- **COMPLIANCES AND DISCLOSURES:**[18]

A producer company is deemed to be a private company irrespective of the no. of members. Thus, the compliance and disclosure burden on producer companies under the Act, is limited.

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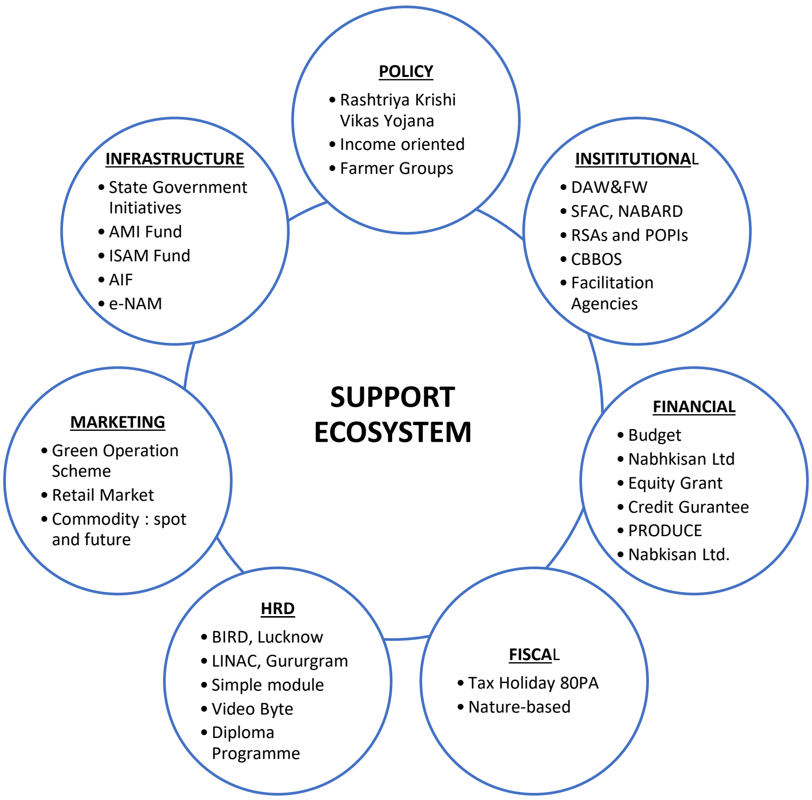
[14] *Id.* § 378E, § 378ZB
[15] *Id.* § 378C (4)
[16] *Id.*, § 378ZD, § 378ZI read with Companies (Producer Companies) Rules, 2021.
[17] *Id.*, § 378ZO
[18] *Id.*, § 378 ZE, § 378ZF, § 378ZR

The above-mentioned characteristics of a farmer producer company enables the farmers to organise themselves into a collective force. They together indulge in appointment of the board, officers and other staff of the company. Once the company is successfully floated, all members combine their fragmented pieces of land to carry on production on a wider scale using common resources and machinery, that is procured and owned by the company. The company through its professional acumen and expertise, supplements physical efforts put in by the farmers, by providing them, access to high-quality input and seeds, better financing opportunities, procuring, processing, grading, storage and delivery facilities. Once the production phase is complete, FPCs collectively retail, the produce of all their members, through a single channel by way of innovative marketing and advertising strategies to provide better returns to their members and ensure profitable sale to the farmer-members and growth of company's business.

III. Support ecosystem for FPCs in India [19]

An elaborate support ecosystem has been established to provide support and assistance to farmers producer companies at all stages of development to establish and sustain a level playing field for them, in the market. The various elements of the ecosystem have been elaborately discussed below:



[19]NABARD, Formation and Promotion of 10,000 Farmer Producer Organizations (FPOs): Operational Guidelines, (July 7, 2020). http://sfacindia.com/UploadFile/Statistics/Formation%20&%20Promotion%20of%2010,000%20FPOs%20Scheme%20Operational%20Guidelines%20in%20English.pdf;

- **POLICY SUPPORT:**

The Indian government under its '*Rashtriya Gramin Krishi Vikas Yojana'* has established a project for 'Formation and Promotion of 10,000 FPOs by the year 2023-24' by providing them with all sorts of backward and forward handholding. It integrates various scheme of central and state government with the FPCs so formed to increase farmers earning. The basic aim of this scheme is to develop a trend of income-oriented agriculture to make agriculture in India, profitable like other businesses. To facilitate agglomeration of large number of small and marginal farmers in to an FPC, the government intends to first mobilise them into small group called Farmers' Interest Groups or Farmers' Clubs. which will further be joined together to constitute a Farmer Producer Company.

- **INSTITUTIONAL SUPPORT:**

Every policy measure taken by a governing body becomes successful only with the help of appropriate institutional support. Promotion of FPCs in the country, is under the aegis of Ministry of Agriculture and Cooperation and Farmers Welfare (DAW&FW). The Central Government has identified two nodal agencies namely Small Farmers' Agri-Business Consortium (hereinafter, '**SFAC**') and or National Bank for Agriculture and Rural Development (hereinafter, **'NABARD'**)[20] as implementing agencies for the scheme. The operational guidelines to the scheme make provision for empanelment of specialist institution like NGOs, Private Companies as Resource Support Agencies (RSAs) or as Producer Organisation Promotion Institutions (or, POPIs) responsible for facilitating the process of promotion of the company. Provisions have also been made for identification of produce cluster areas in every district where Cluster Based Business Organisations (or, CBBOs) can be viably appointed to ensure one-stop services to all FPCs in the district and induce prosperity. A National Advisory Committee consisting of representatives from all stakeholders including academicians and experts has been appointed to evaluate the progress of implementation of the scheme

- **FINANCIAL SUPPORT:**

A total budgetary allocation of four thousand four hundred and ninety-six crores, has been made for formation and allied support to all FPOs in the country including companies. The current budget presented by finance minister made an estimate expenditure of seven hundred and fifty crores towards fulfilment of the promotion scheme and an expenditure of nine hundred

[20] Note: NCDC or National Co-operative Development Corporation only promotes FPOs other than in the form of companies and is thus excluded. SFAC promotes only companies, while NABARD promotes all generally.

crore worth expenditure in building agricultural infrastructure, during this financial year.[21] Besides, these earmarked plans, the Government has established an Equity Grant Scheme to allow matching equity grants to the eligible FPCs to allow them to invest in assets and infrastructure. The central government guarantees certain collateral free loans granted to eligible FPCs under Credit Guarantee Scheme, to ensure feasible credit facility.

- **FISCAL SUPPORT:**

Union budget of the year 2018-19, announced an absolute tax holiday to all FPCs, having turnover less than hundred crores in any 'previous year' between 2018-2024.[22] FPCs can also claim benefits under specific provisions made under the Income Tax Act, 1961, for deduction on agricultural produce, if applicable depending on the nature of goods produced by members of the FPC.

- **HUMAN RESOURCE DEVELOPMENT SUPPORT:**

Human resource development is the most crucial aspect of progress of any company or organisation but more so for an FPC, owing to the fact that more than eighty percent of their shareholders are rural poor who have no access to education or skills required to access and utilize sophisticated agricultural means or methods.

Thus, two training institutes have been established namely, Bankers Institute of Rural Development, Lucknow (BIRD) and *Laxman Rao Imandar* National Academy for Co-operative Research & Development, Gurugram (LINAC) who, in collaboration with other premier educational institutions train the member, officers, staffs of an FPC as well as the office holders of implementing agencies, PSAs, POPIs and CBBOs. The module for the training of stakeholders esp. farmer- members of an FPC are structured in simple-local languages for the benefit of its audience. These training institutions also run professional diploma programmes in FPO management, to train young individual desirous to participate in the management of FPCs.

- **MARKETING SUPPORT:**

The primary aim of FPCs is to increase the income of its producer members by enabling to obtain fair and profitable prices in their suitable market. This to ensure marketing of these products, technical agents are appointed in various levels in the supply chain to educate and connect farmers to the open market. Schemes like Green Operation, have been put in place by

[21] Ministry of Finance, Outlay on Major Schemes, Union Budget 2021-22, 16 (Feb1, 2021) https://www.indiabudget.gov.in/doc/Budget_at_Glance/bag7.pdf.
[22] The Income Tax Act, 43 of 1961, § 80PA (1961).

ministries of agriculture and food processing, to provide financial assistance for establishment of processing and processing centres at farm gates and retail outlets along with connectivity through transport and refrigerated warehouses for perishable goods. Under, the current proposal, twenty-new products including some non-perishable like pulses, have also been made eligible to the benefit of the scheme.[23] The commodity exchange by offering added facilities of training, delivery, warehousing at minimal rate to farmer-participants along with innovative products in the futures market enable market support.

- **INFRASTRUCTURAL SUPPORT:**

State government have been given the cardinal responsibility of ensuring availability of infrastructural facilities for operation of FPCs in their respective states. Specific instruction has been given by ensuring that the FPCs in every state be given same treatment as cooperative societies and be allowed to share the infrastructure support given to their cooperative counterparts. Besides this, funds like Agricultural Marketing Infrastructure (AMI) Sub-Scheme of Integrated Scheme for Agriculture Marketing (ISAM) etc have been set up to be spent on establishment of infrastructural support to FPCs by way of water-shed management facilities, cold storages, retail outlets et cetera.

IV. CURRENT SCENARIO: SUCCESSES AND FAILURES

Farmer Producer Companies in India have, since its conceptualisation under the Companies Act, not only acted as a vehicle for economic progress of producers who have wilfully organised themselves into a corporate body, but have time and again, acted as the foundational basis for efficient realisation of laws for agricultural reforms. FPCs have played an instrumental role in channelising economic progress to the rural sector by filing in the institutional and structural gaps in governance, wherever necessary.,

The first farmer producer company in India was established by the name. "Farmers Honey Bee India Producer Company Ltd.", in the year 2004. The following decade saw a meagre rise in their number with a rough total of one hundred and eighty-two farmer producer companies[24] registered with the Ministry of Corporate Affairs. However, with government incentivisation and policies, rolled out in the year 2014, the number has roughly risen up by ninety-five percent. By the end of year 2020, over four thousand FPOs have been registered as a producer companies under the Companies Act, spanning across twenty-nine states and union territories

[23]Ministry of Finance, Speech of Nirmala Sitharaman, Minister of Finance, 20 (Feb. 1, 2021) https://www.indiabudget.gov.in/doc/Budget_Speech.pdf.

[24]Ministry of Corporate Affairs, Plantation Companies as on March 31, 2014 (March 31, 2014) http://www.mca.gov.in/DataPortal/Ministry/DataPortal/Plantation_Companies.pdf.

of the country with maximum concentration in Maharashtra followed by Madhya Pradesh and Uttar Pradesh.[25]

Farmer Producer Companies, in the country have made path breaking progress in instilling capacity in their members and improving their financial status by simply bringing the farming household together in organised business structure and professional implementation of their business plans. [26]

- Most companies in the country (but, majorly those located in Maharashtra and Rajasthan) have been successful in integrating themselves to the commodity exchanges in the country to safeguard their risks. NCDEX, a leading commodity exchange in India has recorded a total quantity of 32,896 MT of agriculture produce traded by farmer producer companies, on the exchange platform in the past few years.[27]

- The District Poverty Initiative Project rolled out by the Madhya Pradesh government in partnership with the world bank, to for financial support these companies, has caused a sudden boom in their number in the state. The state currently accounts for highest number of young farmer producer companies incorporated between 2014-19 and also accounts for the highest number of active companies with life span of over twenty, thereby setting an example to follow.[28]

However, while some FPCs have flourished, many others have failed to develop effective strategies to sustain their businesses and continue to struggle for existence, let alone prosper. Barring a few exceptions, most FPCs have failed to develop agriculture into a beneficial profit-making business for their member-farmers and have contributed very little to the economic progress of the sector. Farmer producer companies as an organisational structure in India, have faced failures in the following four ways, as discussed below:

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[25]NABARD, 3.2.3 Promotion of Farmer Producers' Organisations, Annual Report 2019-20, 54 https://www.nabard.org/auth/writereaddata/tender/3107191001NAR%202018-19%20(E),%20Web-RGB%20(Checked%20-%20Final),%202019.07.29,%200830hrs.pdf. SFAC, State Wise Progress of FPO Promotion as on 31.12.2020, http://sfacindia.com/UploadFile/Statistics/State%20wise%20summary%20of%20registered%20and%20the%20process%20of%20registration%20FPOs%20promoted%20by%20SFAC%20(as%20on%2030%20September%202020).pdf?var=9958908.25855.

[26]NCDEX Institute of Commodity Markets and Research (NICR), *Kheti ke Sikandar:* Success Stories of Farmer Producer Companies, (Aug., 2020) https://ncdex.com/downloads/fpo/casestudy/Success%20Stories%20of%20FPOs_Aug%202020_compressed.pdf. SFAC, Farmer Producer Organization Scheme Success Story, http://sfacindia.com/FPOSucessStory.aspx. (Last visited on Feb. 16,2021 8:20pm)

[27]National Commodity & Derivatives Exchange Limited (NCDEX), Connecting Farmers to Markets FPO Update (Sept., 2019) https://ncdex.com/public/uploads/pages/NCDEX%20Group,%20Connecting%20Farmers%20to%20Market,%20September%202019_111119.pdf.

[28]Venkatesh Tagat & Aniruddha Tagat. The Potential of Farmer Producer Organisations in India, SSRN Electronic Journal 6 (Jan., 2016). Available at https://www.researchgate.net/publication/323980064_The_Potential_of_Farmer_Producer_Organizations_in_India.

- **INSUFFICIENT:** With a little over four thousand farmer producer companies in the country with average membership of thousand people, a majority of the small and marginal farmers holding forty-four percent of the net operational area under agriculture continue to remain unorganised with fragmented piece of landholding and token income.
- **ILL-FINANCED:** Despite the equity grant scheme and credit guarantee scheme provided by the central government most FPCs continue to face case crunch and of financing sources. The failure of these schemes can be attributed to stringent eligibility criterion prescribed for financing under the scheme.[29]
- **INEFFICIENT:** The financial progress of FPCs have been below average in most case, in-spite of budgetary commitment, legal provisions, and support from resource institutions and civil societies. These companies continue to underperform due lack of entrepreneurship and managerial skills amongst members, officers and staff of the company.
- **INACTIVE:** Companies in India have an average life span of two years, after which they are either struck off, declared dormant, or continue to exist only in the books without any business activity. It has been noted, that about thirty eighty percent of companies in the age group of five to ten years, and, more than forty-six percent of companies older than ten years, are struck off of by the Registrar. This highlighting severe issues in continuity of such concerns.[30]

Thus, it is fair to conclude the Indian experience of corporatisation of agriculture has been bi-polar, wherein either the companies have burgeoned into self-sufficiency or were completely ghosted out of business.

V. LIMITATIONS AND CHALLENGES

There are some inherent limitations in the structure and functioning of FPCs formed under the Companies Act, which need to identified, carefully considered and corrected, in order to make them more relevant to the agricultural sector. Some possible factors that the author feels may be held responsible for the suboptimum performance of FPCs have been discussed below:

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[29]NABARD, Farmer Producers' Organizations (FPOs): Status, Issues &Suggested Policy Reform (2019-20) https://www.nabard.org/auth/writereaddata/CareerNotices/2708183505Paper%20on%20FPOs%20-%20Status%20&%20%20Issues.pdf.

[30] Annapurna Neti, Richa Govil et al, Farmer Producer Companies in India: Demystifying the Numbers, Review of Agrarian Studies Vol. 9, No. 2(July–Dec., 2019).

- **PROBLEM OF AUTONOMY:**

The idea of promoting farmer organisations in the form of a company was to prevent unnecessary government intervention experienced in the cooperatives. However, FPCs are far more complex to promote and sustain than any other form of business organisation and thus, require ancillary support from external sources including government, financing institutions etc at multiple stages. This makes them prone to excessive third-party intervention and prevents them from enjoying business autonomy, thereby, snapping them full circle back to the same position that they were intended to prevent.

- **PROBLEM OF SHAREHOLDERS DEMOCRACY:**

One of the cardinal principles of company law states that 'shareholders' democracy' is the rule, and must not be disregarded unless exceptional circumstances, as have been cleared stated in judicial precedents, exists.[31] Following the same, FPCs by law, are mandated to take decisions at general meeting of members by decision of the majority. However, state of business exposure, education, experience, skills or all and others, available to farmers in rural areas is deplorable which makes the primary controllers-owners of the business, vulnerable to influence of pack-mentality or brain-feeding and less capable of making independent and informed decision making. On a closer look, it becomes questionable if the principle is practically followed, in its true spirit as desired the law or not

- **PROBLEM OF EFFICIENCY IN MANAGEMENT:**

The Companies Act ordains the responsibility of management and administration of an FPC on the Chief Executive who acts under the directions and supervision of the Board, however does not mandate any qualification or experience for appointment to these positions. This leads to induction of unskilled and incompetent people to nodal positions within the company. The choice is further limited by the lack of availability of qualified experts for working in rural areas.

- **PROBLEM OF INCLUSION**

It has been observed that many successful FPC are often led by one or two leaders who are able to give directions, seek information from various sources, create market linkages and able to bring institutional support to the FPC, in blatant disregard to the principles of collective action and mutuality principles that are core to the concept of FPCs.[32]

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[31]Foss v. Harbottle 2 All ER (1950); MacDougall v. Gardiner 1 Ch. D13, 25 (1875).
[32]Subash Surendran Padmaja, Jaya K. Ohja et al, Farmer Producer Companies in India: Trends, Patterns, Performance and Way Forward, Research-gate 12 (April 9, 2019) Accessible at https://www.researchgate.net/pu

- **PROBLEM OF VOTING RIGHTS**

Each member in a producer company has an equal say in the decision-making process, irrespective of his shareholding or business contribution. Lack of provisions for proportionate voting rights, often deter large and influential farm-holders from participating in the FPCs, and forces most of these companies to perform deficiently with only small farmer-members using scanty resources.[33]

- **PROBLEM OF TAX**

Farmer Producer Companies are treated at par with other companies for taxation purposes and are made liable to pay taxes at flat rates. Also, section 80P of the Income Act which provides certain concessions to cooperative societies, excludes all producer companies except those formed by conversion of an interstate cooperative society[34]. This leads to differential treatment amongst similarly placed entities and causes severe set-back to the efforts of collectivization of small farmers into financially viable producer organizations.[35] Furthermore, the ambiguity over applicability of minimum applicable tax (MAT) provision during the period prescribed as tax holiday, has led to immense distress among FPCs across the country.[36]

- **PROBLEM OF TRANSFERABILITY**

The shares of a farmer producer company have very limited transferability and thus, do not provide adequate exit opportunity to its members. The Companies Act, provides for transfer of its shares can only on approval of the Board and to the 'active members', of the company. But there are a few practical difficulties in application of this provision. Firstly, the Act prescribes active status to a member, on the basis of quantum and period of patronage, as mentioned in the Articles of the company, thus, there may be a situation, during the initial years of incorporation where no member has the status of active-member. Secondly, in-case of an FPC established only with ten members i.e., the minimum no. of shareholding required under the Act, it is unclear how shares can be transferred.[37]

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blication/332301467_Farmer_Producer_Companies_in_India_Trends_Patterns_Performance_and_Way_Forward

[33]K B Ramappa & M. A. Yashashwini, Evolution of Farmer Producer Organizations: Challenges and Opportunities, Research Journal of Agricultural Sciences 9(4) 709, 713 (July-Aug.,2018)

[34] Supra note 9. At §378L.

[35]Choudhary Charan Singh National Institute of Agricultural Marketing, Producers Companies Registered Under Part IXA of the Companies Act to be Treated at Par with Cooperatives to Seek Income Deduction under Section 80P of Income Tax Act, 3 https://www.ccsniam.gov.in/images/pdfs/80_P_Revised_1_.pdf. (Last visited on Feb17,8:29pm.)

[36] Rutam Vora, FPOs Seek MAT Exemption to Realise 'Full Benefit' from I-T Relief, BusinessLine (Aug. 24, 2020).

[37]Institute of Company Secretaries of India (ICSI), FAQs on Producer Companies, The Companies Act,2013 Series, 34(Nov., 2017)

- **PROBLEM OF DISPUTE RESOLUTION**

The Act mandates that all internal disputes within a producers' company must be settled by way of arbitration or conciliation. It is a well-established fact that the ADR mechanism in India is exorbitantly expensive and beyond means of small and marginal farmers. In addition to the cost, lack of access to trained arbitrators/conciliator, is another significant issue.

- **PROBLEM OF COMMERCIALISATION**

Farming in India is a source of sustenance for the mass, whereby marginal farmers grow different types of food crops, in two cropping seasons, to meet their family's consumption requirement throughout the year. It is feared that corporatisation of agriculture under the model of 'One District, One Product' will cause two probable consequences. Firstly, it will restrict production to standardized commercial commodities forcing farmers to purchase food-grains for consumption, thereby causing a heavy burden on their meagre income. Secondly, practising monoculture by FPCs may force unemployment on farmers in either of the two cropping seasons.

- **PROBLEM OF INTERPRETATION**

There are several terms and phrases, under Part XXI-A of the Companies Act that have been loosely used in the provisions thereunder without any clear definition. Some of them are 'participation in business activity', 'patronage', 'special user rights', 'active members' etc. These terms hold wide impact across provisions for producer companies under the Act, ambiguity in which, may be misused to justify exploitative or elusive action taken to propagate the interest of a few people within the company.

The above stated problems, though not exhaustive, can be considered as the principal defects in organisational design of farmer producer companies as provided by the Indian Companies Act, which needs to be corrected, to abrogate the causes of its failures under the existing regime.

VI. WAY FORWARD: PROPOSED SUGGESTIONS

In order to realise the full potential of farmer produce companies in enabling its members to leap-frog out of economic deficiency, it is important to look forward and decide a future course of action to address the shortcomings faced in the past. On the basis of elaborate discussion on aspects of failure, success of FPCs and study of the factors that hinder their development in the country, the author proposes the following corrective action:

- Investment made in promotion or formation of FPCs or in funds civil society groups, resource agencies or other form of incubators that indulge in the same, must be made an eligible expenditure of the Corporate Social Responsibility (CSR) Fund under Schedule VII of the Companies Act. Such a provision will attract companies esp. those whose businesses are directly or indirectly linked with agricultural or rural development to take sincere efforts in promoting and profitably sustaining the business of a farmer producer company.

- Some minimum qualifying criteria based on education, experience, skill etc, must be provided by appointment of directors to the Board. This will ensure efficient management of the company. In addition to that, government must take the initiative to maintain a district-wise roll of people who are eligible and feasibly available in the vicinity, to be appointed as officers in an FPCs, to supplement choice of farmer member and ensure appointed of skilled personnel to nodal positions in the company,

- Instead of routing the finance through government agencies and funds alone, linkages must be established with private players in the financial market, by encouraging and rewarding to develop innovate financial products to fend patient finance to FPCs on a priority basis. This will ensure steady flow of finance in the sector.

- An amendment be introduced to extend the benefit of deduction given under Section 80P of the Income Tax Act, 1961, to FPCs.

- The minimum attendance required to achieve quorum for general meeting must be raised so as to ensure maximum participation of members in the business of the Company. To ensure that all members are treated at par and no one is forcefully excluded from the decision-making process, a provision must be made to inform the secretary in writing, the reason for not attending a meeting. The secretary must be enjoined to maintain the record of such notes and preserve them like other documents of the company.

- A special tribunal must be established to deal specifically to handle entry-level disputes involving internal or external disputes occurring in the normal course of company's business and provision for settlement or fast-tracking resolutions, must be made. In the alternative, government must made financed arrangement to make arbitration and/or conciliation facilities accessible to the farmers.

- Planned efforts must to taken to create awareness and education, amongst farmer-members about the benefits of using insurance, contractual farming, trading on commodity exchange etc as a tool to hedge themselves against price volatility caused due to market risk, credit risk or operational risk.

- Additionally, an amendment must be made to all laws containing provisions for contractual dealing with farmers and their agricultural produce, to include a reference to special protections available to them against unconscionable contracts drawn on exploitative terms or under undue influence, fraud, misrepresentation etc. Provision for compulsory order for payment of costs and reasonable compensation may also be included. Such provisions must then be advertised extensively, to inform and reassure farmers of their protection under the law.

VII. CONCLUSION

It is rightly said that '*solution lies at the root of very problem'*. The author believes that, with minor improvements in the structure and a down-to-top approach to integrate farmers to the available ecosystem, the concept of farmer producer companies in India, has the potential to act as a progressive tool to empower small and marginal farmers with the ability to adapt with the changing business environment around agricultural sector in the country and to infuse in them sufficiency and resilience to participate in the open market so as to command higher prices, smoothen their incomes and streamline their economic aspirations into the pipeline of national progress. It is hoped that with continued government support and handholding, farmer producer companies will contribute significantly to farmers economic welfare and open new dimension of agricultural progress in the country.

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