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The Three Farm Laws: An Analysis of the Provisions, the Concerns and the Road Ahead

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ABSTRACT

Amidst the growing concerns for the ongoing Covid-19 pandemic, thousands of farmers brave the cold and the police blockades to protest and voice their disapproval of the newly enacted farm laws by the Central Government. The laws have been deemed to be revolutionary by the Central Government and have been advocated as long sought reforms in the agricultural sector. The laws, when read together, focus on a shift from the decades old APMC controlled Mandi system to the one dominated by market forces. They open the gates for corporates and finance houses to enter the agricultural sector, hoping to change the lives of millions who depend on farming and the allied activities. The three laws have faced challenges from the very onset. They were first challenged on being promulgated through ordinance route, then on their fragile constitutionality as against the spirit of cooperative federalism and are finally being opposed as against the best interests of the most important stakeholders of the sector i.e. the farmers. In this background, this paper firstly defines the provisions the three laws provide and explains the vision, when the three laws are read together. The focus then shifts to speculate on the how the laws will bring about constructive changes to the India's agrarian sector while also arguing against the provisions and implementation of the Acts. The paper also provides insight into the constitutionality of the Acts and discusses the possible solutions and measures ahead.

Keywords: Farm laws, Acts, Agriculture, APMC, Cooperative Federalism.

I. INTRODUCTION

Farmers have once again occupied the central role in the country's political sphere as the Government of India promulgated three ordinances on 5th June 2020 amidst the ongoing pandemic and severe economic strain. The ordinances represent fundamental reorientation of the agriculture sector in the Indian economy. The Central Government used the Covid-19 crisis to push the reforms through the ordinance route and without the active involvement of the state Governments.

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By 14th September the bills were brought before the parliament for ‘discussion’ and have since been passed. However, the proceedings in the parliament visibly represent the lack of discussion and constructive discourse leading to regretful ramifications for almost all the stakeholders. The Government, on the very least, could have used the parliamentary platform to put forward its vision for the agricultural sector and explain the vitals of the provisions and the necessity of the reforms. The bills received the Presidential assent on 27th September and were then notified in the official gazette.

Since India liberalized its economy from 1991, attempts have been made to reform the Agricultural Produce Market Committee (APMC) and Essential Commodities Act. These acts have now been perceived as overextending their use. The acts were useful to provide protection to farmers by provisions like Minimum Support Price (MSP), when India was a farm importer. However, with time the nation has changed to a farm surplus economy with better food processing and storage facilities. The Acts have been termed as historic and are expected to lead the farming sector to a new age of prosperity and help in realizing the Central Government’s aim of doubling the farmers income by 2022.

The Central Government has invoked Entry 33 in the List III² which essentially deals with trade and commerce. Agriculture though, is exclusively a state subject listed in Entry 14 in LIST II³ along with Entry 26 in List II⁴ which refers to “trade and commerce within the state”. The path taken by the Union Government weakens the spirit of cooperative federalism which is a part of the basic structure of the constitution even when the Judiciary has upheld the legislative powers of states in Intra-state Agricultural marketing⁵. The Laws certainly have a poor legal validity but are expected to pass the test of constitutionality when challenged in the apex court.

The three laws need to be read together in order to comprehend the premise the Acts share. It essentially allows for private players to invest in the supply-food-chain in the agriculture sector, removal of intermediaries and passing of the benefits to the farmers. However, to even those who have long advocated reforms in the agriculture sector the Acts represent complex issues. The need is to understand the vision of the Government and analyze it in context of the provisions and current regulatory framework. While the political discourse continues, the lives of millions employed hangs in the balance!

This Research Paper explores and outlines and the progression of the Acts. Further, the paper

² INDIA CONST. art. 246.

³ Ibid.

⁴ Ibid.

⁵ (2002) 9 SCC 232.

firstly explains the Acts, understanding the important provisions of each of the three laws and then provides clarity on the current system of agricultural framework which has evolved over a period of five decades. Furthermore, the discussion moves on to understanding the revolutionary mechanisms the Acts seeks to bring in. The next part focuses on the arguments and objections raised against the Acts and analyzes the major loopholes present in the same. Lastly, the paper provides suggestions and speculates on the possible course of action, attempting to determine what the future of the laws behold!

II. WHAT ARE THESE ACTS?

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020⁶ promulgated by the parliament seeks to bypass the State-level APMC Acts. It contains various provisions that aim to implement changes to the current functioning system with provisions like defining a 'trade area' as 'an area from where trade of farmers' produce may be undertaken'⁷ and is not already under APMC and thus limits the regulation and control of the APMC 'market yards'.

As the preamble of the Act suggests, it aims to create an ecosystem where farmers and traders would be 'free to transact' in 'agriculture produce'⁸ without any market fee or cess levied on them⁹ under any state Act of the State and without the necessity of having a license¹⁰, along with promoting 'efficient, transparent and barrier-free inter-State and intra-State trade and commerce of farmers' produce'¹¹. It defines 'electronic trading and transaction platform' as a platform to set up online buying and selling of farmer's produce, thus permitting electronic trading platforms. Allowing both 'trade areas' and 'electronic platforms' take away control from the State Governments as they do not have jurisdiction over either of them.

The Essential Commodities (Amendment) Act, 2020¹² amends the provisions of the Essential Commodities Act, 1955 which controlled the production, supply and distribution of essential commodities making it difficult to hoard the said commodities during shortage or artificially increasing their prices. The amendments to the six-and-half-decade-law attempts to remove commodities like cereals, pulses, potato, onions, edible oilseeds and oils from the list of

⁶ Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, No. 113-C of 2020, INDIA CODE (2020).

⁷ Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, § 1(2)(m), No. 113-C of 2020, INDIA CODE (2020).

⁸ Ibid at § 2(2) & § 2(3).

⁹ Ibid at § 2(6).

¹⁰ Ibid at § 2(5).

¹¹ Ibid at § 2(4).

¹² Essential Commodities (Amendment) Act, 2020, No. 111 of 2020, INDIA CODE (2020).

‘essential commodities’ specified in the ‘schedule’¹³ of the 1955 Act and specifies that the price of the mentioned commodities may only be regulated under ‘extraordinary circumstances’ including ‘war, famine, extraordinary price rise and natural calamity of grave nature’.¹⁴

It further provides that the government that impose a stock limit unless there is a 100% increase in price of perishable goods, or 50% increase in price of non-perishable goods¹⁵. The base price would be the price in the immediately preceding 12 months or the average retail price of the last five years, whichever is lower. It is opined that the removal of the threat of stocking limits would invite large businesses that have till now found this as a major constraint.

The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 aims to provide ‘to provide for a national framework on farming agreements’¹⁶ so that the farmers can directly enter into contract with the buyers/sponsors cutting out the costs of the intermediaries and eventually adding to their income. The enactment seeks to transfer the cost of market unpredictability from the farmers to the sponsors, while also providing dispute resolution mechanisms like ‘conciliation’ with effective redressal timelines. The law also protects farmers from exploitation by specifically prohibiting agreements of any ‘transfer, including sale, lease and mortgage of the land or premises of the farmer’¹⁷ while also prohibiting the raising of any permanent structure on the farmer’s land or premises by the sponsor¹⁸.

III. AGRICULTURAL MARKETING IN INDIA AND THE ROLE OF THE APMC

India has always been an ‘agrarian’ economy, with Agriculture and the allied sectors forming the backbone of the Indian Economy by providing employment to most of the population, especially in the rural areas. Growth of agriculture has been most fluctuating; from 6.3% in 2016-17 to declining to 2.8% in 2019-20¹⁹. However, it was the agriculture sector that brought a ray of hope for the nation as it clocked a growth rate of 3.4%²⁰ in the pandemic hit

¹³ Essential Commodities Act, 1955, § 2(a), No. 10 of 1955, INDIA CODE (2020). S2(a).

¹⁴ Essential Commodities (Amendment) Act, 2020, § 2, No. 113-C of 2020, INDIA CODE (2020).

¹⁵ Ibid at § 2(b).

¹⁶ Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, No. 112-C of 2020, INDIA CODE (2020).

¹⁷ Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, § 8(a), No. 112-C of 2020, INDIA CODE (2020).

¹⁸ Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, § 8(b), No. 112-C of 2020, INDIA CODE (2020).

¹⁹ Ministry of Finance, *Economic Survey 2019-20*, Union Budget (Oct. 24, 2020, 3.40 PM), <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf>.

²⁰ National Statistical Office, *Press Note on Estimates of Gross Domestic Product for the First Quarter (April-*

first quarter of 2020-21, mostly due to a bumper Rabi crop harvest when other sectors like ‘Constructions’ reported a mammoth contraction of 50.2%²¹.

Indian agriculture practices underwent a huge change in the 1960s when the Green Revolution was realized. High-yielding variety crops gave much impetus to the failing crop produce and growing demand. In order to bring a structure of control and regulation, different states like Gujarat²², Maharashtra²³, Rajasthan²⁴ etc had enacted acts to establish government regulated ‘mandis’ before the Ministry of Agriculture rolled out a nationwide model act on The State Agriculture Produce Marketing (Development & Regulation Act, 2003)²⁵ to bring reform in the agriculture market. Currently, there are about 2477 principal regulated markets (the APMCs) and 4843 sub-market yards regulated by the respective APMCs in India²⁶.

As per the current practice, a farmer harvests his produce and brings it to the APMC or the ‘Mandi’. In a Government controlled and regulated APMC, the farmer’s produce is then scanned, and an auctioning takes place. This results in a ‘price discovery’ i.e. the price at which the farmers can sell their produce to licensed ‘middlemen’ recognized by the APMC. These then sell the farmer’s produce to institutional buyers like retailers or big traders. If the farmers are not able to sell to the middlemen, they could also sell their produce at MSP, as procured by the Government. However, in India, not all farmers are able to avail MSP as though the Government announces MSP for 23 crops; it ends up procuring mostly two crops i.e. Wheat and Paddy which, as reports suggest, only 6% of the farmers are able to avail²⁷. This is further restricted to mostly the northern states where most of the protest the laws has been concentrated.

Reforms have been introduced over time to the APMC, the most recent being the introduction of e-NAM i.e. National Agriculture Market which is envisioned to be a pan India electronic trading network connecting APMCs to essentially realize ‘One Nation, One Market’. Around

June) 2020-2021, Ministry of Statistics and Programme Implementation (Oct. 25, 2020, 5.20 PM) http://www.mospi.gov.in/sites/default/files/press_release/PRESS_NOTE-Q1_2020-21.pdf.

²¹ National Statistical Office, *Press Note on Estimates of Gross Domestic Product for the First Quarter (April-June) 2020-2021*, Ministry of Statistics and Programme Implementation (Oct. 25, 2020, 5.20 PM) http://www.mospi.gov.in/sites/default/files/press_release/PRESS_NOTE-Q1_2020-21.pdf.

²² Gujarat Agricultural Produce Markets Act, 1963, No. 20 of 1964, Gujarat (1993).

²³ Maharashtra Agricultural Produce Marketing 1 [Development and Regulation] Act, 1963, No. 20 of 1964, Maharashtra (2018).

²⁴ Rajasthan Agricultural Produce Markets Act 1961, No. 38 of 1961, Rajasthan (2008).

²⁵ The State Agricultural Produce Marketing (Development and Regulation) Act, 2003.

²⁶ Economic Survey 2014-15, *A National Market for Agricultural Commodities- Some Issues and the Way Forward*, Vol. 1 Chap. 8, Union Budget (Oct. 26, 2020, 2.00 PM), <https://www.indiabudget.gov.in/budget2015-2016/es2014-15/echapvol1-08.pdf>.

²⁷ Shri Shanta Kumar Committee, *Reorienting the Role and Restructuring of Food Corporation of India (FCI)*, Food Corporation of India (Oct. 23, 2020, 4.00 PM), https://fci.gov.in/app2/webroot/upload/News/Report%20of%20the%20High%20Level%20Committee%20on%20Reorienting%20the%20Role%20and%20Restructuring%20of%20FCI_English.pdf.

1000 mandis have been integrated within the network. The progress has been slow as most of the states are required to amend their APMC Acts to provide the required provisions for e-NAM.

IV. THE FARM ACTS – THE NEXT REVOLUTION IN AGRICULTURE?

The three Acts read together promote a vision to bring in more participation from the private players including agri-business startups in the Indian agricultural sector. They have been held as historic and are poised to ‘free’ the Indian farmer from the chains of the middlemen who are often blamed to garner unjust benefits out of farmer’s hard-earned produce. They also provide a legal framework for protection of farmers from any foreseeable exploitation. The laws are envisioned to promote market forces to drive the dynamics of the agricultural sector in India thereby essentially driving the rural economy of India.

The essence of the laws is to promote direct trading between the farmer and the buyer. The cutting of middlemen essentially removes the commission charges and other taxes like APMC cess etc. leading to better price realization of crops; the benefits of which are expected to be passed on to the farmers. The cutting out of middlemen is also expected to weed out the problems related to regulation of middlemen to stop hoarding, artificial structuring of prices etc. With the passing of the laws, buyers can also operate more freely which gradually leads to a wider market for the farmers to sell their produce.

‘Contract farming’ is expected to lead a revolution in farming as farmers will have an insurance to their crop before sowing the seeds i.e. guarantee of a buyer at fixed a price. Farmers will know the price at which they’ll be able to sell their crop after the harvest as they have already contracted with the buyer. Understanding the dynamics of farming and the industry, in case a bumper harvest is reaped for any crop, farmers will still be able to sell at pre-harvest price as was fixed in the agreement and would not have to sell at a lower price because of a general bumper harvest. Advance payments through agreements will also provide the much-needed interest-free investments that farmers require for buying seeds, fertilizers, equipment etc. and end their dependence on moneylenders essentially adding to their income.

The Acts also provide for agri-business startups and other organized entities to connect farmers to food processors and exporters, cold storage facilitators, and to essentially facilitate their upbringing in the supply chain while ensuring transparency. This helps in transitioning the sector towards a more formal sector; helping to collect and organize data efficiently which in turn would help in forming ‘Agri-centric’ policies in the parliament. The Bills

essentially would help in strengthening the supply chain by taking away the regulatory uncertainty and in development of the concept of ‘farm-to-table’.

As most of the agri-startups and businesses are helping towards digitization of farm-related activities, the reforms would allow deepening of technological ties with the agricultural sector i.e. from providing online inter-state trading platforms to digitization of supply chains. Added role of Private Investments and Supermarket chains would essentially induce them to invest in infrastructure like cold-storage facilities and hence would help in preventing the food wastage while facilitating food storage and processing.

With the breaking down of global supply chains and the surplus food stock in Indian storages, the Acts invites corporates to enter and invest in Indian supply chains. This enables India to become an active and essential player in the global supply chains which further contributes to the idea of ‘Atamirbhar Bharat’ by the Government of India.

V. THE FARM ACTS – LOOKOUT FOR THE RED FLAGS

The promulgation of the Acts has witnessed protests from farmer unions all over the country with most of it concentrated in the northern states of Punjab and Haryana. The opposition parties have termed the laws as the final blow to the farmers. Experts have criticized the laws as ‘anti-farming’ while some have questioned the constitutionality of the Acts. States have registered their disapproval against the acts as their powers are limited by laws passed by the parliament. The ‘commercialization’ and ‘privatization’ of agriculture in India, as critics argue, might lead to much uncertainty and the proposed ‘de-regulation’ seems to be a huge blow to the agrarian sector.

As per the recent report²⁸, 86.2 percent of Indian farmers comprise of small and marginal farmers who own less than 2 hectares of land. These farmers are under heavy obligation to sell their produce, as fast as they can after the harvest as they do not have access to storage facilities, buy inputs and prepare for the next crop, transport the produce and bargain for prices; they rush to the nearest mandis to sell their produce. The notion of ‘freedom of choice’ to the farmers to sell their produce as promoted by the government only remains a ‘political gimmick’ for two reasons. Firstly, ‘freedom of choice’ already existed as farmers were free to sell their crop anywhere in the country (impractical due to transportation costs) even before the Acts were enacted. The Acts have only removed restrictions on the buyers. Secondly, the Acts nowhere mention the alternatives to the mandis, and provide ‘corporates’

²⁸ Agriculture Census 2015-16, *All India Report on Number and Area of Operational Holdings*, Agricultural Census (Oct. 22, 2020, 7.00 PM), http://agcensus.nic.in/document/agcen1516/T1_ac_2015_16.pdf.

and ‘companies’ as an alternative and the only remaining ‘buyers’ which essentially reduces to ‘no-choice’ at all for the farmer.

Farmers fear the acts being a proverbial trojan horse and the withdrawal of MSP accompanied with the collapse of the APMC Mandis. The notion remains that the corporates would initially provide fair prices to the farmers and when the trade shifts outside the mandis and with the gradual collapse of the APMC system, the farmers would then be at the mercy of the industrial giants to sell their produce. As limits on hoardings have been removed essentially allowing corporates to store huge amounts of grains, experts argue that the agri-businesses will further exploit the farmers inducing them to sell the produce at an arbitrary price set by them. If the farmer refuses, the corporates will still be able to sail through with their hoarded storage while the farmers suffer with no alternative to sell their produce to.

The problems are further aggravated by the dispute resolution system provided by the Acts. It is widely feared that the farmers will be burdened by the complex legalities of the contracts drafted by the corporates which eludes the understanding of a common farmer. There is no clear legal mechanism which would especially cater to the needs of the farmers as the system presented by the laws clearly helps the corporates with their legal expertise.

The laws have been welcomed to seemingly cut out the middleman to pass all the benefits directly to the famers. However, as the truth stands, the laws actually provide for 4 layer of middleman as ‘third party’²⁹ is left undefined in section 2(g), the term ‘farm service provider’³⁰ in section 3(1)(b), ‘third party qualified assayers’³¹ as mentioned in section 4(4), “an aggregator or farm service provider”³² as defined under section 10, all essentially meaning the involvement of a middlemen. These are obvious provisions to provide for a nexus between the sponsor company and the farmers in the form of a middleman, who can now function outside the regulation of APMC and exploit the farmers.

Corporates will find it difficult to contract with a large number of farmers and hence would look for cooperatives or co-opts who could aggravate produce for them. This would eventually lead to cartelization which essentially takes away the freedom of choice of individual farmers subjecting them to the whims of ‘power-players’ within the cartel. Additionally, the Acts do not provide for ‘one nation one market’ because the e-NAM are a network of disconnected trading platforms and are still far from being consolidated as ‘one

²⁹ Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, No. 112-C of 2020, § 2(g) INDIA CODE (2020).

³⁰ Ibid at § 3(1)(b).

³¹ Ibid at § 4(4).

³² Ibid at § 10.

market'. Moreover, State Governments have been left displeased as they are set to see a considerable reduction in their revenue collection through the APMC market system due to removal of chargeable taxes.

VI. CONCLUSION – THE WAY FORWARD

The Acts have a vision of providing for the Government's promise of doubling the farmer's income by 2022. They did bring relief to the long-standing demands of agricultural reforms. The intent and the vision are clearly 'farmer-centric', however the provisions and the implementation lack on vital grounds. What can be construed from a very basic analysis is the lack of discussion and meaningful discourse with the stakeholders. The concern about the Laws revolve not around what the Act says, but what it does not! The lacunas and loopholes can still be filled to provide and empower the agrarian economy of the nation.

The Government needs to firstly work on the current infrastructure and research ways to open more marketplaces where the farmer can sell their produce. More market choices would bring more choice to the farmers who can then avail the best prices for their produce. The newly rolled system only talks about these new marketplaces but does not provide for the creation of the same! MSP assurance and a more efficient and better procuring system will improve the farmers income if more farmers are able to avail the MSP. Bringing in a separate law to fill the voids will be a welcome step for better realization of the vision the Acts pursue.

The Government needs to realize that a large-scale liberalization of a core sector like Agriculture needs to be done on a modular basis in phases. No country has ever benefitted by surrendering its food and farm sovereignty to corporates. In a welfare state like India, Government regulations are a necessity to bring sustained growth to a core sector like Agriculture which provides mass employment to the country's population. Corporates and private players work on a profit-based model which requires deep oversight and sovereign backed regulations to ensure that the farmers are not exploited. Private Investment is a welcome step in this core sector; however, Government vigilance still remains a necessary perennial.

The Acts and the provisions are revolutionary in their very essence, while much remains to be seen on how the market forces will drive the end results. All the stakeholders have something in the laws for themselves; while some warrant more protection, some rejoice the possibilities of the new opportunities. As the sector moves towards a liberal structure, the roles played by the Centre and the State Government in their quest of 'Cooperative Federalism' would also impact the results the Acts seek to harvest. The laws have the potential to change agricultural

activities in India and transform it from a mere 'means of livelihood' to harness the commercial aspect of it. Much would unfold as the Acts become a reality and the market forces dominate the horizon!
