FARMERS ACT, 2020 – WEIGHING THE PROS AND CONS

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ABSTRACT

The three controversial farm bills that is, The Essential Commodities Act, 1955, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services, 2020 and The Farmers' Produce Trade and Commerce (Promotion and Facilitation) act, 2020 has the aim of changing the trading in agriculture sector completely. Being the primary sector of the country, it employs nearly one hundred and fifty million farmers and seven lakh other people who are directly related to the sector. There is a growing need to safeguard the interest of all these people, especially with the introduction of these bills, as there is a little chance that they would be able to stand against such a big business conglomerate. Since, the laws enacted gives power to the Central Government in the subject matter; it is their duty to devise ways to protect the interest of everyone in this sector. Minimum Support Price is a security blanket for the farmers. The paper purports to show the legal as well as the philanthropic side of MSP. A brief weighing of the pros and cons of each bill and the constitutional validity of the bills has been discussed in the article. An attempt has been made to discuss the effect of these bills on Arthiyas and Commission agents as well.

BACKGROUND

Earlier, the farmers were only allowed to do trade in the mandis that is, the area specified by the APMCs which could regulate the farmers' produce and provide infrastructure to facilitate trade. Inter-state barriers were imposed because of which farmers could only trade within their own city. The major point of controversy in these bills is the Minimum Support Price (MSP). MSP has been devoid of legal backing since the very beginning and even now it cannot be claimed as a matter of right. Also, agriculture had always been a state subject. Coming in the ambit of Centre, the matter has seen controversies regarding its constitutional validity. A clear understanding of these farm bills and the issues raised because of them has been discussed in detail below:

THE THREE FARM BILLS

A. Essential Commodities Act,1955

Section 3 of this Act gives power to the Union Government to make laws with respect to the production, supply and distribution of "essential commodities". According to Section 2(A) of the Act, the nine commodities that are included in the list of essential commodities are drugs, fertilizers (organic, inorganic or mixed), foodstuffs including edible oil, hank yarn made from cotton, petroleum and petroleum products, raw jute and jute textiles, seeds of food-crops, fruits, vegetables, cattle fodder, cotton; face masks and sanitizers.[1]

The Essential Commodities (Amendment) Act, 2020 has removed commodities like potato and onion from the list of essential commodities. The previous stock holding limit imposed on wholesalers and retailers

[1] Explained: Why Essential Commodities Act amendment a double-edged sword; https://www.theweek.in/news/biz-tech/2020/09/23. Face masks and Sanitizers were included in the list in March,2020 after the ongoing pandemic

has now been removed. Although, the Central Government reserves the power to impose limits on stock holding during "exceptional circumstances" like natural calamities, surge in prices or war[2] but mainly, the action of imposition of stock limit will be based on the price rise. This action by the government will take place if a 100% increase in the retail price of horticulture produce or a 50% increase in the retail price of non-perishable agricultural food items is seen.

According to a survey, Indian farmers incur an approximate loss of Rs. 93,000 crore per year due to poor storage and transportation facilities.[3] A yearly average of 16% loss can be seen in fruits and vegetables produced, all due to the lack of poor infrastructure.[4] The Government claims that with the new act, post harvest loss of crops will decrease and the country will see a boost in storage capacities as there will be less fear among the private investors about regulatory interference in their operations.

The Economic Survey of 2019-20 said that almost every time when the Government intervened under this Act, it resulted in distorting of agriculture and was not at all effective in curbing inflation. In turn, what the intervention led to was rent seeking[5] and harassment.

Pros:
Of course, it would be remunerative for the farmer if they are able to sell their produce anywhere without any restriction and are not just confined to the local mandis. The surplus that the traders could not buy from the farmers due to the stock limit given by the government would be removed because of which the traders as well as the farmers would be able to benefit from economies of scale. It would help to create a completive market environment and help prevent wastage of food products. This in turn, will help create price stability.

Cons:
But the underlying problem here is that the country will see an exorbitant rise in rural poverty. With the removal of stock limits on items such as pulses and onions, the chances of these products being hoarded by large private corporations are extremely high. There will be increase in inflation and monopoly of a certain group of people will increase. The rich will become richer and the poor will remain poor. Also, since it is a highly centralised law, the States will be left with no power to regulate the menace of hoarding and black marketing.

B. <u>The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services , 2020</u>

<u>Farming agreement</u>:

The Act states guidelines about how an agreement takes place between the buyer and the farmers. This agreement needs to be made

[2] According to sub section (1A) of the amended bill
[3] Poor post-harvest storage, transportation facilities to cost farmers dearly, https://www.downtoearth.org.in/news
[4] India wastes up to 16% of its agricultural produce; fruits, vegetables squandered the most, https://www.financialexpress.co
[5] **Rent-seeking** is a term used by economists to describe unproductive income, including from corruption

before the production or rearing of the farm produce. The agreement made can be for a minimum of one crop season or one production cycle of livestock and a maximum period of five years with exception to when the production cycle is more than five years.

Pricing of farm produce:

The Act makes it compulsory to clearly mention the price of the farm produce in the agreement. Any variation in price has to be clearly recorded in the agreement along with clear reference.

Dispute settlement:

The Act also makes it mandatory to mention a conciliation board and process in the agreement. The board shall have fair representation from both the sides. At first, all disputes must be referred to the board for resolution. If the board doesn't resolve the dispute within 30 days, thereafter the parties can approach the sub divisional magistrate for resolution. If still the parties aren't satisfied by the resolution given by the magistrate they can forward the appeal to an Appellate authority (presided by collector or additional collector). Within the period of thirty days from the receipt of application the magistrate and appellate authority has to dispose of the dispute. Penalties may be imposed by any of the above authority when either of the part is acting in contravention of the agreement. However, no action can be taken against the agricultural land of farmer for recovery of any dues.[6]

Pros:

1) Farmers can get the security for his earnings as he can get into the contract before even sowing the crop.
2) They can clearly know what he is going to earn from the crop.
3) Business companies and even other people who gets into contract with the farmers would now also know at what price they will be getting the crop for.

Cons:

1) Farmers are not well versed with the concept of getting into contracts they may be defrauded by the private individuals.
2) If the rate of the crop grows significantly after the price of the produce has been decided and no clause is added related to this farmer will incur losses.

C. The key features of the The Farmers' Produce Trade and Commerce (Promotion and Facilitation) act, 2020:

Trade of farmer's produce: [7]

These APMCs could (i) provide licenses to commission agents, buyers, and private markets to regulate the trade (ii) charge market fees or any other charges on such trade, and (iii) infrastructure for their markets to help the trade in the same. Now, the farmers are allowed to do trade 'outside trade area', i.e., any place of collection, aggregation and production of farmers' produce. Farmers can also conduct trade in other cities as well which was earlier restricted.

Farmers can sell their produce to anybody and anywhere. It removes the interstate barriers imposed on the farmers.

Market fee abolished:

[6] https://www.prsindia.org/billtrack/farmers-produce-trade-and-commerce-promotion-and-facilitation-bill-2020

[7] https://ruralindiaonline.org/library/resource/the-farmers-produce-trade-and-commerce-promotion-and-facilitation-act-2020/

Under this Act, the market fee has been lifted off in any trade conducted in an 'outside trade area'.

Electronic Trading:

An electronic platform may be set up for the farmers to facilitate them in direct buying and selling of their produce through an online platform. The following entities may establish and operate such platforms: (i) companies, partnership firms, or registered societies, having permanent account number under the Income Tax Act, 1961 or any other document notified by the central government, and (ii) a farmer producer organisation or agricultural cooperative society.[8]

Pros:

1) Monopoly of the traders will come to an end as markets will now be open.
2) Increased competition among buyers as well as other corporations.
3) Increased income of the farmers as they can take their goods to the place where they get the best price for their produce.
4) Farm produce will be available to the regions where there is shortage as markets will be open for trade from other states
5) Less cost to be borne by the farmers as market fee will be lifted off.[9]

Cons:

1) MSP won't be available to the farmers as it has been waived under this.
2) States would lose the mandi fees.
3) No market fee can be levied which tend to benefit the big companies as they might not pass the benefit to farmers or the buyers. [10]

Importance of MSP and how it has been ignored under these Bills

What is Minimum Support Price (MSP)?

Minimum support price is that price which guarantees a minimum payment to the farmers and act as a safety net from any kind of risks due to change in the price of crops. The commission for Agricultural Costs and Prices (CACP) does the task of determining the MSP which is further used by the central government to set the MSP.

The fact that these three farm bills doesn't mention anything about the MSP has become a ground for controversy. Earlier too MSP was devoid of legal backing and even now it cannot be claimed as a matter of right.

"It is only a government policy that is part of administrative decision-making. The government declares MSPs for crops, **but there's no law mandating their implementation**," explained Abhijit Sen, former Planning Commission member and chairman of the Commission for Agricultural Costs & Prices (CACP).[11] Sugarcane is the only crop whose MSP has some statutory backing due to its pricing being governed by the Sugarcane (Control) Order, 1966 issued under **the Essential Commodities Act.**

[8] https://www.prsindia.org/billtrack/farmers-produce-trade-and-commerce-promotion-and-facilitation-bill-2020

[9] https://economictimes.indiatimes.com/news/economy/agriculture/agricultural-reforms-heres-a-look-at-key-measures-in-the-legislation-passed-in-lok-sabha/the-farmers-produce-trade-and-commerce-promotion-and-facilitation-bill-2020/slideshow/78201772.cms

[10] https://transfin.in/what-are-the-pros-and-cons-of-the-three-farm-bills-passed-by-the-lok-sabha

[11] https://indianexpress.com/article/explained/what-is-the-basis-of-msp-6609668/

There are various recommendations made by different committees to make MSP legally enforceable .Some of them are listed below:-

1) The 2015 Shanta Kumar committee report had used NSSO data to point out that only 5.8% of Indian farmers actually sell at MSP. "Much of the procurement that government agencies undertake comes from larger farmers, and in a few selected states: Punjab, Haryana, Andhra Pradesh and lately from Madhya Pradesh and Chhattisgarh," the report pointed out.[12]
2) The Committee for Agricultural Cost and Prices has recently in its report made a recommendation for making MSP a right.[13]
3) Punjab and Haryana High Court has recommended that farmers be given a legal right to claim Minimum Support Price (MSP), and directed the Central and State Governments to form legislations for boosting farmers' income. "The farmers must be given a legal right to claim the MSP without any hindrance. The Union of India and State Government may, in their own wisdom, legislate to give legal status to the MSP to boost the farmers' income," the court suggested.[14]
4) The right to sell at minimum support prices (MSP)', a government panel has recommended. "Growers in remote parts do not have access to regulate the wholesale markets and end up selling their produce in local 'haats' at rates lower than government announced MSPs", observed the commission for agricultural costs and prices (CACP), adding that making MSP a legal entitlement will 'instill confidence among farmers.'[15]

Thus the problem with the current bill is that without any statutory recognition to MSP farmers are left at the mercy of the corporate and procurement official. The government could have mentioned about the MSP assuring the farmers that agricultural produce shall not be brought below MSP.

Effect of these Bills on Arthiyas /Commission Agents

Arthiyas are the commission agents from whom farmers procure money for harvesting their crops. Money is offered to the farmers without collateral or any other legal formality that banks would otherwise require. This is the only reason why farmers prefer them even though they charge a much higher rate of interest than the nationalized banks. Arhtiyas financed 66.74 per cent of loans in unbanked villages and 54.45 % of loans in areas that had a bank in Punjab, a study by then Centre for Research and Industrial Development (CRRID) on rural indebtedness found.[16] It is a general practice that farmers sell their produce through these commission agents after procuring loans from them.

Arthiyas will be worse affected from these farm bills as they won't have the power to go head to head with the major corporations.

[12] https://scroll.in/article/973762/modi-insists-farm-bills-have-nothing-to-do-with-msp-so-why-are-farmers-protesting
[13] https://thewire.in/agriculture/farmers-minimum-support-price-legal-right
[14] https://www.theleaflet.in/let-farmers-claim-msp-as-a-legal-right-suggests-punjab-and-haryana-high-court/#
[15] https://www.livemint.com/Politics/JBHQZNGAqZPxNpwOwS3aGM/Make-MSP-a-legal-right-for-farmers-says-government-panel-C.html
[16] https://www.news18.com/news/india/commission-agents-in-punjab-haryana-protest-farm-bills-say-it-sounds-death-knell-for-mandi-system-2898591.html

Farmers would no longer be selling their crops through these commission agents and as a result they won't be offering loans to farmers. This would render nearly seven lakh people spread across 1860 mandis according arthiya associations out of business. Farmers now will have to go through various formalities to procure loans which will be difficult for them as small scale farmers cannot put down as much security to procure loans.

On the other hand, this can also be a blessing for the farmers as now their misery because of the continuous exploitation of these commission agents would end. They would not be in a situation of a debt trap and farmer suicides would substantially decrease. Moreover, now farmers will also be able to procure loans at a nominal rate and increase their profits.

CONSTITUTIONAL VALIDITY OF THE FARM BILLS

Indian constitution is based on a **Federal structure** as held in the case of **S R Bommai v Union of India (1994),** a nine-judge Bench held that federalism is part of the basic structure of the Constitution.[17]

Seventh schedule of the constitution tries to distribute the powers between the centre and the states. It has three lists, first is the union list which tells us about what comes under the purview of the centre, it has 97 subjects on which the centre has the exclusive rights to make the laws. The second is the state list which has 66 subjects on which the state can legislate and the last one the concurrent list which has 47 subjects on which both state and centre can legislate, but in case of a conflict, the law made by the parliament will prevail. Parliament can override the law made by the state but only under special circumstances.
Agriculture related terms are mentioned in 15 places in the seventh schedule.

Entries 82, 86, 87 and 88 mention taxes related to agriculture specifically dealing with the assets and income of it. The word agriculture has been mentioned eight times in the state list. Entries 14, 18, 28, 30, 45, 46, 47 and 48 are specifically the ones containing the word agriculture in it. Entry 14 deals with the education and research related to agriculture, entry18 deals with the aspects related to the land used for agricultural use, entry 28 deals with markets and fairs, entry 30 with market indebtedness, entry 45, 46, 47 and 48 deals with revenue, taxes, successions estate duty respectively.

In the **Concurrent List**, Entry 6 mentions transfer of property other than agricultural land; 7 is about various contracts not relating to agricultural land; and 41 deals with evacuee property, including agricultural land.[18]

Entry 27 states that trade and commerce within the state is subject to the state list however this entry is subjected to entry 33 which is the part of the Concurrent list. Centre has used the Entry 33 to bring these bills in force.[19]

ENTRY 33 SEVENTH SCHEDULE OF THE CONSTITUTION[20]

"<u>33. Trade and commerce in, and the production, supply and distribution of,-</u>

[17] 1994 AIR 1918, 1994 SCC (3) 1
[18] https://www.mea.gov.in/Images/pdf1/S7.pdf
[19] https://www.mea.gov.in/Images/pdf1/S7.pdf
[20] https://www.mea.gov.in/Images/pdf1/S7.pdf

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) Foodstuffs, including edible oil seeds and oils;

(c) Cattle fodder, including oilcakes and other concentrates;

(d) Raw cotton whether ginned or unginned, and cotton seeds; and

(e) Raw jute.”

ENTRY 24[21] states that the industries are also state subject but it come with the rider that the if it is deemed necessary by the parliament than they may declare any industry to fall under the control of the union government for the purpose of defense or for the prosecution of war (Entry 7 of the Union list) or where parliament feels that it is expedient in public interest (Entry 52 of the Union list).However no such rider has been provided for the “agriculture” or “Markets” therefore they are mainly the state subjects .

Case: I.T.C. Limited vs. Agricultural Produce Market Committee (APMC) and Other, 2002

The Tobacco Board Act, 1975 which was introduced for the betterment of the industry under the centre, but the Bihar government still list tobacco as an agricultural produce. Court Held that under state APMC ACT market fees are often charged from ITC. If the State and Centre make laws on the similar material under an Entry within the LIST III then only State laws become invalid and if it is a case which falls outside the ambit of List III, it's to be first examined that whether subject was covered under entry under List I or List II, then the dominant legislation would prevail.

The court struck down the central Tobacco Act and Entry 28 of the State List was interpreted in state’s favor.

SECTION 6 of the Farmer’s Produce Trade and Commerce (Promotion & Facilitation) Bill which provides that no state will charge any market fee or cess on trading of farm produce. State Government has competence such to charge tax, charge or cess so this is the clear infringement of what is in the domain of state list.

Therefore it can be said that these bills do affect the federal structure of the constitution and their legal validity should be subjected to judicial review. But, they are not out-rightly unconstitutional.

CASE OF BIHAR (After abolition of APMC Act in 2006)

It’s been 14 years since the APMC ACT,2006 has been abolished in Bihar. The situation in Bihar can be seen as an in example how the abolition of mandi system is going to work for the rest of the States .

A study by Jaipur-based National Institute of Agriculture Marketing in 2011-12 National Institute of Agriculture Marketing which is based in Jaipur conducted a study in 2011-2012 said that even after the APMCs were abolished the state's agriculture

[21] https://www.mea.gov.in/Images/pdf1/S7.pdf

infrastructure has not been improved in the absence of private firms. The study suggested that a proper regulation to be enacted by the state government for the private-public partnership in this sector. "The private sector will operate and maintain the market. The user charge may be levied for the services provided in the market" the study said. Farming associations should be formed so that better marketing of the produce can be done. The abolition of the mandi system had lead to the dismantling of market information system which was earlier working effectively and also the procurement of agricultural produce by the government at MSP was very low in number. [22]

According to the Food Corporation Of India website, only 0.05 lakh metric tonnes (LMT) of wheat was procured from Bihar in 2020-21 against the revised target of 7 LMT. In 2019-20, the state agencies procured 0.03 LMT of wheat.[23]

Bihar co-operative minister Rana Randhir Singh [24] As claimed by the co-operative minister of Bihar Rana Randhir Singh that procurement of wheat was low as market price was better than the MSP. He also said that "Many buyers like those from biscuit and flour industry are buying wheat directly from farmers,"

STATE RESPONSE TO THE BILLS

RAJASTHAN:-

The Rajasthan government did not make any changes in the law passed by the centre rather they have countered them through the administrative order .The state while exercising the power under **Section 3 of the Rajasthan Agricultural Produce Markets Act, 1961** which gave state the power to declare any area as market area through notification .The Rajasthan government converted all its warehouses of Food Corporation of India, the Central Warehousing Corporation and the Rajasthan State Warehousing Corporation, meant for procurement on minimum support price, to procurement centers or markets. The effect of this would be that the state government will get market fees which is to be paid to them through these central warehouses despite the fact that is mentioned in the **SECTION 6 of the Farmer's Produce Trade and Commerce (Promotion & Facilitation) Bill** which provides that state will not charge any market fee, cess, levy on trading of farm produce.

PUNJAB:-

Punjab Government recently passed the **Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Special Provisions and Punjab Amendment) Bill, 2020 which still needs the assent of President. In this, an effort has been made to address the problem faced by the farmers in Central farm bills.**

KEY FEATURES OF THE BILL ARE

[22] https://www.hindustantimes.com/india-news/kashi-vendor-invites-pm-modi-to-his-momos-cart/story-FRbJ31wkHRafjhi5eYtYLO.html

[23] https://www.hindustantimes.com/india-news/kashi-vendor-invites-pm-modi-to-his-momos-cart/story-FRbJ31wkHRafjhi5eYtYLO.html

[24] https://www.hindustantimes.com/india-news/kashi-vendor-invites-pm-modi-to-his-momos-cart/story-FRbJ31wkHRafjhi5eYtYLO.html

1) **For a valid sale of wheat and paddy seller has to pay a price equal to or greater than price announced by the central government .**
2) **Also there is provision of minimum imprisonment of 3 year and fine if he signed a contract where is supposed to sell below MSP.**
3) **Farmers can also approach the civil court beside exercising all the remedies that have been given to them by the Central Act.**
4) **The bills have reintroduced the market fees for the private players outside APMC which have been abolished by the Central Bills.**

Amendments in The Farmer's Produce and Commerce (Promotion and Facilitation) Special Provisions and Punjab Amendment Bill 2020

1) Similar State of affairs will continue to exist with regard to the APMC Act 2016
2) As stated by Dr P S Rangi who is former consultant of Punjab State Farmers Commission, He said that by bringing the entire state under its ambit, the Bill ensures regularization of the private players by the rules of government mandis. They will have to apply for the licenses and market fees have to be paid to the state.[25]
3) Any person who violates the provision of the central act no penal action will be taken against him.

Amendments in The Essential Commodities (Special Provisions and Amendment) Bill, 2020

Production, or supply and distribution of goods is subject of the state. The state of Punjab will have power to prohibit or regulate the production, supply and distribution and under exceptional circumstances like famine, price rise, natural calamity, or any other situation, they can also impose stock limits, thus the main object of the bill is to protect the consumers from black marketing and hoarding.

SUGGESTIONS

From the above discussion and proposed state amendments, if we introduce these bills in a regulated and controlled manner, they will surely benefit the farmers. According to us, some of the amendments required to be made in these bills are as follows:

1.) Subsidy should be given to the Arthiyas as these bills are not just affecting them but also to the people employed under them.
2.) A representative should be appointed by the Central Government to help the farmers get a fair contract.
3.) Statutory backing should be provided to MSP.
4.) Farmers must be made aware of the Litigation process and assistance should be provided to them for the same.
5.) Central Government must also form an authority to keep in check the powers of the private organisations.

CONCLUSION

Farmers have building block of our nation since ages. The three bills introduced by the Centre have surely put their rights under the light. In the above article, we have tried to explain and simplify the new Farm Bills by stating their pros and cons respectively. We have also tried to explain the role of private organizations in the agricultural sector and how their involvement would affect the sector. But, still according to us the new farm

25 https://indianexpress.com/article/explained/explained-what-punjabs-three-new-farm-bills-say-what-they-seek-to-achieve-6813386/

bills have more pros than cons and if the bills are introduced in a regulated manner, keeping in view the interest of all the persons involved, our agricultural sector would surely see a substantial rise in production as well as income of the farmers.

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