



## ISSUES AND HOPES WITH CONTRACT FARMING IN INDIA

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### Abstract

Due to uncertainties and unpredictable nature of Agricultural Sector accompanying with challenges due to COVID-19 pandemic lockdown whipped up misery of farmers. Thus, to mitigate risk and enhance livelihood of farmers; with promise of Doubling the Farmer's Income by 2022 and creating One Nation and One Market, The Central Government enacted three farm bills which intend to reform the present structure of State regulated markets of agriculture creating free trade area and uplifting private investments through encouraging Contract Farming in such free markets. Regulating agricultural markets is not new but it has turned into monopolies thus how competition and price stability of produce will be effected by turning them into unregulated and tax free trade markets will be covered along with discussion upon power of State legislating over such matters. Thus, this Article will highlight the economical and constitutional issues subjected to these farm laws which attracted huge protests and agitation across the nation and provide concrete suggestions and recommendations to procure real intentions behind these legislations avoiding concentration of power only in hands of big corporations which could turn whale to the small fishes symbolising the farmers. Growth of Nation is directly depended upon the growth of agricultural sector and farmers are

architects of this sector whose opinion and confidence must be kept at par.

### 1. Introduction

*"When tillage begins, other arts follow. The farmers, therefore, are the founders of human civilization."*

— *Daniel Webster*

Farming, the practice of agriculture or aquaculture<sup>1</sup> also termed as Agriculture sector has been important part of Indian Economy since ages which goes back into the history of Indus Valley Civilization. This sector is the primary source of livelihood for almost more than half population of nation adding value of 15.96 as percentage in Gross Domestic Product (GDP) in year 2019 rightly termed as backbone for Indian economy by Mahatma Gandhi six decades ago.

To the date, the march of India's agriculture from 1947 has been remarkable. Since 1965, the implementation of Green Revolution technology has been cataclysmic. More than 1.1 billion tonnes of agricultural commodities are now produced by Indian farmers every year, accounting for more than 80 species across the sub-sectors.<sup>2</sup> Whereas, it is noted in The Annual Report 2018-19<sup>3</sup> by The Department of Agriculture, Cooperation & Farmers Welfare that the share of agriculture and allied sectors in the Agriculture Gross Value Added (GVA) declined steadily from 18.2 percent in 2014-15 to 16.0 percent in 2018-19. In a rapidly rising and structurally changing economy, the dropping share of agriculture and allied sectors in the GVA is an anticipated outcome.

<sup>1</sup> Merriam Webster meaning of Farming.

<sup>2</sup> Ministry of Agriculture and Farmer's Welfare, Report of Committee on Doubling Farmer's Income 6(Sept, 2018).

<sup>3</sup> Department of Agriculture, Cooperation & Farmers Welfare, Annual Report 2018-19 2(2019).



Past strategies have always focused to satisfy basic food requirement, raising its production and improving standards of food security and had run such course successfully. India heads the list among largest producer and exporter of agricultural products in the world but had failed to recognise the need of farmers and to promote their welfare. The net result has been that farmer's income remained low, which is evident from the incidents of poverty among farm households and through their growing suicidal incidents.

The government has set a target of doubling the income of farmers by 2022. For the purpose of same an Inter-Ministerial Committee has been set up in April 2016 to discuss issues relating to same and suggest strategies to achieve it. The *Committee*<sup>4</sup> regarding steps taken towards doubling farmers income made several recommendations among which increase in corporate sector investment through various policy framework which furnishes opportunity for private sector establish private markets, alternative marketing channels, online market platforms etc. was provided along with regulating contract farming to enable private investment in terms of capital, technology and upgrade the value system of this sector. To incentivise farmers producing companies' exemption under Income Tax Act was commended too.

With this view to boost the income and to escalate welfare process of farmers. The Central Government promulgated three Ordinances in the period of distress and dark hours of national medical emergency on June 5, 2020 namely, (i) The Farmer's Produce Trade and Commerce (Promotion and

Facilitation) Ordinance, 2020, (ii) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020, and (iii) The Essential Commodities (Amendment) Ordinance, 2020. These Farm laws passed in monsoon session and received assent of President on September 24, 2020.

This article aims to describe these three laws in detail with special reference to the structure of APMC and loopholes of same. This work shall describe the complete framework of Contract Farming prescribed by new farm laws and its status before such enactment. Further, this article will tend to sight the economical and constitutional issues faced by present laws and why such laws with virtuous intent of welfare of farmers to create One Nation and One Market face so huge disapproval and objections by the class of farmers. Finally, concluding with certain suggestions as reforms needed urgently for the better implementation of newly passed laws and to make available minimum price support to farmers and minimum cost for consumers.

## 2. Background

Market regulation programs of agriculture produce could be traced back from British epoch in India, where produce of raw cotton was regulated to make it available at reasonable prices to various textiles mills of UK. The Berar Cotton and Grain Market Act, 1887 was the first set legislation drawn for regulation of prices and market of such produces. Further, The Model Bill, 1938 was prepared by the Government of India which could not breakthrough much till independence and later on most of the states

<sup>4</sup> Ministry of Agriculture & Farmers' Welfare, Report of the committee on Doubling Farmers' Income –



enacted Agricultural Produce Markets Regulation (APMR) Acts and got operated and regulated by them where essentially all the wholesale markets (usually termed as mandis) were brought in bounds of these acts. Traders (usually termed as artis) operating distinctly within *mandis* in the parts of states required license. Direct trade with farmers other than by such licensed artis was not permitted under such regulations. All farm produced items needs to be bought and sold by auction in such regulated markets operated by Agricultural Produce Market Committees (APMC's) in transparent approach and support farmers with minimal price.

The goal of the Agricultural Market Regulation was to protect farmers from the exploitation of intermediaries and traders and to ensure better prices and timely payments for their goods. However, these markets have acquired the status of oppressive and monopolistic markets over a period of time, offering little assistance in direct and open marketing, structured retailing, smooth deliveries of raw materials, agro-processing, competitive trade, exchange of knowledge and acceptance of creative marketing systems and technologies.<sup>5</sup>

To curb such issues and encourage direct marketing and upgrade with contract farming arrangements Union government designed the Model APMC Act in 2003 to be implemented by state governments. The Committee set up by The Ministry of Agriculture, Government of India under the supervision of Shri K.M. Sahni was of

expectations that this Model Law shall make it possible to integrate agricultural markets nationally, will promote the development of competitive agricultural markets in the private and cooperative sectors, build an atmosphere conducive major investments in infrastructure related to marketing, and shall modernise and improve existing markets.

Not all states, however, have passed the bill. Some states have passed but have neither framed nor reported laws. Therefore, Interstate barriers continue. Only 14 states had released rules in accordance to the contract farming as reported by the Volume IV of the Dalwai Committee report which clearly marked contract farming not yet as mainstream and have to come a long way to be best suited and favoured over the traditional way of trade in agricultural sector. Thus, to boost instantaneous investment in the tough times of pandemic in this sector to enhance the income of farmers and hold up the sinking economy of nation with the spirits of antitrust laws<sup>6</sup> to sustain competition in markets (herein State agricultural produce markets) and to carry on trade freely<sup>7</sup> while protecting the interest of consumers and traders new laws were enacted to facilitate remunerative prices through competitive alternative trading channels; to promote efficient, transparent and barrier-free inter-State and intra-State trade and commerce of farmers' produce outside the physical premises of markets<sup>8</sup> through setting up the national framework on farming agreements that protects and empowers farmers to engage with agri-business firms, processors, wholesalers, exporters or large retailers for farm services and sale of future farming

<sup>5</sup> DR. NEHA TOMAR, APMC ACT IN INDIA: RISING FOOD INFLATION A DECADE STORY, 2 IJSSIR 38, 40 (2013)

<sup>6</sup> The Competition Act, 2002.

<sup>7</sup> Art.19 (1)(g) of The Constitution of India.

<sup>8</sup> Preamble, The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.



produce at a mutually agreed remunerative price framework in a fair and transparent manner.<sup>9</sup> These laws also promotes the framework of the electronic trading and provides well defined dispute settlement mechanism and conciliation when disputes come into light under such agreements. Further, for improvising price and stock limitation of foodstuff Essential Commodities Act, 1955 have been also amended.

### 3. Framework of Contract Farming

The Concept of Contract farming is not new to India. Its footprints could be traced back to the British colonization, but new forms and models of such arrangements have prevailed post-Independence<sup>10</sup> but it has attained new relevance by arrival and ingress of FDI in the nation. In keeping with continuous reforms to be made for doubling income of farmers by 2020 constitution of drafting committee for a “Model Contract Farming Act” was announced in Budget, 2017-2018 addressed as The State/ UT Agricultural Produce Contract Farming (Promotion and Facilitation) Act, 2018 which paved out provisions and Paved out the route for framing an exclusive law model on subject of contract farming presently in form of The Farmers (Empowerment And Protection) Agreement On Price Assurance And Farm Services Act, 2020.

We are well acquainted and settled with the essentials of an Agreement<sup>11</sup> detailed in The Indian Contract Act, 1872 which when enforceable by law forms a contract.<sup>12</sup> With

implementation of The Farmers (Empowerment And Protection) Agreement On Price Assurance And Farm Services Act, 2020 it made clear that “*a written agreement entered into between a farmer and a Sponsor, or a farmer, a Sponsor and any third party, prior to the production or rearing of any farming produce of a predetermined quality, in which the Sponsor agrees to purchase such farming produce from the farmer and to provide farm services*” shall constitute a Farming agreement.<sup>13</sup>

Following are the essentials of framework of contract farming as provided by the new enacted farm laws:

- a) Farming agreement furnishes the terms and conditions including the time of supply, quality, grade, standards, price and such other issues.
- b) The maximum period for all farming agreement shall be five years. Provided such period could be extended if mutually decided by farmer and sponsor and expressly mentioned in agreement.
- c) Establishment of registration authority.
- d) Setting up three level Dispute settlement mechanism by forming conciliation board, Sub-Divisional authority and Appellate authority.

By the virtue of The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 these contract farming agreements could be carried out in free trade area without any prior regulation of state APMC Acts engaging in inter, intra state or electronic trade freely. The scope of trade area have

<sup>9</sup> Preamble, The Farmers (Empowerment and Protection) Agreement On Price Assurance And Farm Services Act, 2020.

<sup>10</sup> Haris. N, Present Status and Prospects of Contract Farming, VI IRJIF 1, 2(2019).

<sup>11</sup> Section 10, The Indian Contract Act, 1872.

<sup>12</sup> Section 2(h), The Indian Contract Act, 1872.

<sup>13</sup> Section 2 (g), The Farmers (Empowerment and Protection) Agreement on Price Assurance And Farm Services Act, 2020.



been widened by referring it to any area or location, place of production, collection and aggregation including farm gates, factory premises, warehouses, silos, cold storage any other structures or places, from where trade of farmers' produce may be undertaken in the territory of India<sup>14</sup> and No market fee or cess or levy as charged by state APMC regulations shall be levied on any farmer, trader or on electronic traders trading in such free trade areas.<sup>15</sup> The innocent intent of new farm laws could be clearly traced by not allowing sponsors make any modification or acquisition of farmer's land<sup>16</sup> nor allowing any action for recovery of dues against it<sup>17</sup> but farmers setting foot in these agreements confines themselves to various terms and conditions<sup>18</sup> and linking these agreements to insurance or credit<sup>19</sup> keeps door open for potentiality to wash out such intentions.

#### 4. Issues

With the intent to improvise the state and livelihood of farmers creating 'One Nation, One Market' to refine the ease of doing business significantly contributing into the economic growth of nation by immediate legislations seem to be unacceptable by large section of society and same is evident by the mass protest carried by the farmers and by parliamentarians during its enactment with clear message of saving farmers and saving democracy. The intent seems to be washed out as these legislations tilts the balance towards private investment and control more

putting farmers at risk. These legislations are also challenged before apex court questioning upon its constitutionality. Such issues are concisely explained under two distinctive heads as following:

#### Competition and Price stability Issues in Free Trade Market

As discussed, new farm laws permit trade of agricultural produce anywhere outside the scope and dominance of state regulated markets and recognises contract farming. Turning from Arthiyas monopolised market to such unregulated and tax free trade areas allows corporates a back door entry calling for its turn and control which could beyond doubt bind and exploit small farmers lacking alike representation, bargaining power and could upkeep off minimal support price staying unconcerned to their plight. Herein, the present set-up of mandis is engineered to collapse thus, such market would eventually fall into corporate greed centred with generating only profits and intent of creating other competitive channels of trade could turn out in futile. These open markets are thus feared to turn into oligopolies where market is run by small number of traders and they come together to influence the prices far from oversight of government easily exploitable and crashing the stability of prices.

There are all possibilities that contract farming could very well take turn into proxy approach of corporate farming. No doubt such contracts extend call for world class

<sup>14</sup>Section 2(m), The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.

<sup>15</sup>Section 6, The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.

<sup>16</sup>Section 8, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.

<sup>17</sup>Section 15, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.

<sup>18</sup>Section 3, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.

<sup>19</sup>Section 9, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.



mechanized agro- technologies and skills but due to lack of proper knowledge and utilisation such boon can turn into curse and glimpse of same was spotted in recent case of Pepsi co. where small farmers were sued by the company for growing proprietary FC5 variety used for making Lay's chips by seeking damages of around a crore from each of them. This action of company was scrutinized as "against food sovereignty" and the "sovereignty of nation" by Kapil Shah of Jatan, one of the advocacy groups assisting to defend the farmers. Concern and anxiety of company for its patented variety is no doubt evident in the competitive market but whipping weakest element in the chain, the farmers will always be made as scapegoat as tried by Pepsi co. in this lawsuit.

All in all, when new farm laws are read and understood together, it not only creates hesitance among the farmers but also tend to work against the interest of consumers. Amendment in Essential Commodities Act discouraging regulating mechanism; removing of stringent restrictions on stock, movement and price control of agricultural foodstuffs attracts anti-competitive practices by particular players in food chains resulting into hoarding, black marketing leading into price inflation and monopolies.

### Constitutional Issues

The Constitutionality of any legislative enactment has to be evaluated in the light of the theories on the basis of which courts decide matters to be treated as law. Laws signifying 'unconstitutional' are interpreted by terms such as void, invalid, stillborn, ineffective and unenforceable. In *Marbury vs. Madison*<sup>20</sup>, John Marshall C.J. had observed "All those who have framed written

*constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature repugnant to the constitution, is void. This theory is essentially attached to a written constitution, and, is consequently to be considered by this Court as one of the fundamental principles of society."*

Unconstitutionality of parliamentary laws could arise and challenged only on two grounds- the matter challenged arise in state subject thus out of legislative competence or its provisions violates or offends the Fundamental rights constituted in part III of the Constitution of India.<sup>21</sup>

### SUBJECT MATTER OF PRESENT FARM LAWS:

Before going on the subject matter of present laws it is of mark importance to note that the term agriculture finds its presence in all the three lists described in the seventh schedule whose legislative powers have been specifically defined in the Article 245 and 246 of Constitution of India and Present farm legislations enacted by the Parliament comprising The Farmer's (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 and The Farmer's Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 have failed to mention the constitutional provisions by the virtue of which Parliament has power to make laws on these subject matter in the Statement of Objects and Reasons added with these acts.

Term agriculture has been clearly mentioned to be excluded in Entries 82, 86, 87, 88 of Union List from levy of taxes, estate duty and

<sup>20</sup>Marbury v. Madison, 1 Cranch 137, 177 (1803).

<sup>21</sup>Union of India v H.S.Dhillon, 1972 AIR 1061, 1972 SCR (2) 33.



from succession of property and Entries in Concurrent List too mentions contracts and and transfer of property not including agricultural land in Entry 6 and 7; Entry 41 declares agricultural property to be evacuee property thus, making it clear that agricultural matters are kept outside the Parliamentary jurisdiction empowering state exclusive rights to legislate in such matters prescribed under Entries 14, 18, 28, 30, 45, 46, 47, 48 of List II. The point of conflict only arise in the Entry 33 of Concurrent List which states that:

*“Trade and commerce in, and the production, supply and distribution of,— (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 oilseeds and oils; (c) cattle fodder, including oilcakes and other concentrates; (d) raw cotton, whether ginned or unginned, and cotton seed; and (e) raw jute.”*

Justification of present laws legislated by the parliament on basis above mentioned entry shall make all powers of State comprehended in the State List redundant, the legislature cannot violate the constitutional prohibitions by employing indirect means<sup>22</sup>. According to Doctrine of Colourable Legislation “you cannot do indirectly what you cannot do directly”, in such cases court have to look upon the true nature and character of the legislation.<sup>23</sup>

The Supreme Court in *ITC Ltd v. APMC*<sup>24</sup> confirmed the validity of several laws of APMC and struck down the central Tobacco

Board Act, 1975. It was stated: *“The Entries in the Lists should be read together without giving a narrow or restricted meaning to any of them. Powers of the Union and the State Legislatures are both expressed in precise and in definite terms and, therefore, there can be no reason in such a case in giving broader interpretation to one rather than to the other. It is only when an apparent overlapping occurs the doctrine of ‘pith and substance’ has to be applied to find out the true nature of legislation and the Entry within which it would fall. When different entries in the same List crop up for consideration the usual principle followed is that each particular entry should relate to a separate subject or group of subjects and every attempt should be made to harmonise different entries and to discard a construction which will render any of the entries ineffective”.*

#### VIOLATION OF FUNDAMENTAL RIGHTS:

As discussed above that how present enacted farm laws will affect the price stability and competition of market which could turn great tragedy and distress for the community of farmers by turning the free trade markets power centric in hands of big corporations without any regulation or control over them. The unrestrained hoarding and black marketing will allow certain players of market to regulate prices and set market according to their accord and conditions clearly acting against the interest of farmers keeping away from the misery and plight of farmers violates Article 14, 15 and 21 of Constitution of India. Thus, present laws emerge to tilt towards private sector

<sup>22</sup>R.D.Joshi v. Ajit Mills, AIR 1977 SC 2279.

<sup>23</sup>Nageshwar v. A.P.S.R.T Corporation, AIR 1959 SC 316.

<sup>24</sup>ITC Ltd v. APMC, Appeal (civil) 6453 of 2001.



discriminating against poor farmers resulting to impair their standard of living. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.<sup>25</sup>

Plot of present enacted laws has been set up to collapse the structure of state regulated agricultural markets affecting the large-scale livelihood of middlemen. The 'Arhatiyas' will lose not only the commission in their work but will also lose their traditional business. In *olga Tellis v. Bombay Muncipal Corporation*<sup>26</sup> (payement dwellers case) court had ruled out that 'right to livelihood' is included in Article 21, The court also found: "If the right to livelihood is not treated as the part of the constitutional right to life, the easiest ways of depriving the person of his right to live would deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the State to secure to citizen and adequate means of livelihood and right to work, it would be sheer pendentary to exclude the right to livelihood from right to life."

Dispute Settlement Mechanism drafted in new farm laws are insufficient to provide adequate legal assistance to poor farmers thus lacking alike representation before court of Law. Parties of Contract Agreement can approach to Sub-Divisional Magistrate when matter is not settled in conciliation process and no civil court can be approached to decide or grant injunctions in such matters.

## 5. Conclusion and Suggestions

As discussed above, the main issues in newly enacted farm laws which created mistrust among the farmers side lining the intent to reform the agricultural sector by modernising it and improving the conditions and upkeep of farmers and improving the ease of doing business. Such issues defiling the basic rights and infringing the power of state over which parliament encroach right of making laws could be addressed and put an end to it working towards betterment of larger interest of present laws and need of an hour. Followed are certain suggestions and recommendations as point of improvements government must work for better implementation of intent of recently enacted farm laws to usher reforms in agricultural sector and improvise conditions of farmers:

### 1. STATUTORY BACKING TO MSP

A mere statutory backing to the minimum support pricing to gain the trust of farmers need to be addressed which will assure the farmers that nothing in new enacted laws shall cease government insuring minimum support and purchase below it must be strictly prohibited. Ensuring such minimum support price for their produce and regulations by government to avoid running of free trade areas in tune of big corporations will boost the interest of farmers thus, improvising their participation in new trade areas and contract farming will make such model hit which will ultimately improvise the economic conditions of nation.

Economic stability is directly dependent on the participation and growth of agricultural

<sup>25</sup>Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors, WRIT PETITION (CIVIL) NO 494 OF 2012.

<sup>26</sup>*olga Tellis v. Bombay Muncipal Corporation*, AIR 1986 SC 180; (1985) 3 SCC 545.



sector and farmers are architect of this sector, thus assuring their support is must.

## 2. STRENGTHENING PRESENT APMC MARKETS

As already discussed, present APMC markets comprise of many shortfalls but tumbling down the same structure before the uncontrolled power of big corporation is no solution. Along with the liberalisation of agricultural sector government has to work toward the strengthening these state regulated markets which provides platform for means of livelihood and source of revenue to many class of labourers, middlemen and such structure provides feasibility to many farmers as all can't afford to transport their produce beyond nearest APMC.

It is mark of importance that many states had already amended APMC Act making it more liberal and allowed contract farming under their watch and such regulations are equally important to protect farmers getting exploited.

## 3. MAKE AGRICULTURE SECTOR PRODUCTIVE-CENTRIC RATHER THAN ONLY INCOME-CENTRIC.

According to the 56<sup>th</sup> Standing Committee Report of Ministry of Agriculture and Farmers Welfare presented before Lok Sabha to achieve target of doubling the farmers income by 2022 recommended:

*“The Government is aiming to reorient the agriculture sector by making it income-centric rather than purely a production-centric activity. A farmer's income is a basket of earnings from agriculture (including horticulture), allied activities like dairy, livestock, poultry, fishery etc. and ancillary activities like beekeeping etc. Apart from*

*these farm incomes, he also earns from other activities like wage labour, off-farm activities etc. Earnings from agriculture constitute the principal source of income of a farmer”*

The focus of the most vital sector of nation shall always be based on improvising the production which shall ultimately improve income of farmers and other class associated with it. Making focus only on income will not be help in long run process.

## 4. BETTER DISPUTE SETTLEMENT MECHANISM

Creating a Laissez- faire market by the virtue of new enacted legislation will sure-shot create more problems leading in rise in disputes and such situations farmers shall be easiest target in the complete chain which will get hit in it. If aggrieved farmers will have to go through so much legal complications and keep running in conciliation processes, when shall they work in farm. These disputes which tend to arise from new structure market will burden the already burdened authorities thus, better system of adjudication which shall exclusively deal with agricultural disputes for expertise and fast delivery of justice must be recommended. Along with this farmer must be provided with the better legal assistance and understanding of various legal compilations of agreements in which they get bind, so they get protected from getting exploited from big corporations assisted with highly qualified legal team.

## 5. REGULATING ESSENTIAL COMMODITIES

Amendment in Essential Commodities Act by limiting the regulation of essential commodities only in specified situation of Inflation, war, famines and grave situation on



basis of Statement of Reasons and Objects that India have become surplus in commodities is totally Indefinite. Plight of migrants during lockdown for requirement of necessity of food continues to haunt nation. It is evident from many incidents where commodities were stocked to influence the price of same in market violating the stocks limits as per the regulations, removal of such stricken regulations will dilute the act in favour of such players who act against the interest of both consumers as well as farmers. Thus, diluting pre-existing act by present amendment is dangerous and proper regulations are very essential to keep check on stock limits and avoid situations of black marketing.

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