



ANALYZING FARM LAWS IN LIGHT OF CONSTITUTIONALITY AND REALITY

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OBJECTIVE

The objective of this research paper lies in the fact that the researcher holds the holy book of law i.e. Constitution to the highest pedestal and to understand the efficacy of new laws with respect to the provisions laid down by the constitutional makers in order to analyze the new Farms Act and protest going around.

SCOPE

The paper will highlight on various committees reports submitted to Government of India, the legislations, some cases, and reviews collected from protestors.

RESEARCH TYPE

The research is based on both doctrinal and non-doctrinal, because the topic itself suggests the necessity to conduct the field research in order to draw a conclusion without any biasness.

HYPOTHESIS

The particular farm laws were made within a short span of time without considering the reality and conditions of poor farmers just for the government's satisfaction. Does the parliamentary power on agriculture is consistent with the scheme of federalism and spirit of Constitution.

KEYWORDS

Farmers, Agriculture, Indian Constitution and Minimum Support Price.

Introduction

Jai jawan jai kisan- by Lal Bahadur Shastri ji Farmers are the most important factor for any country. In country like India where values, morals and nature is worshiped, we believe that farmers are a representation of "ann devata" i.e. god of food. Since the whole world have understood the importance of clean environment for the healthy life and protects it, similarly enhancing our farmers and agriculture sector is equally important as they are providing us food to live and livelihood as well.

Historical background since Independence

India had to face food scarcity after independence because at that time agriculture production was not adequate to meet the country's requirement. The then Prime Minister Sh. Pandit Jawaharlal Nehru introduced the five year development plans of India. Let us understand in brief:-

First Five Year Plan(1951-1956)- Therefore, the highest priority was given during the first five-year plan was to the agricultural production. Almost one-third or 31% of total plan funds have been allocated to agriculture. There were developed irrigation facilities and fertilizer plants. Consequently, production of food-grains were increased by 36% in a short period of five years. Whereas, Third Five Year Plan(1961-1966)- the priority was given to the exporting, providing raw materials to the industries. The GREEN REVOLUTION also began during this period by the then Prime Minister Sh. Indira Gandhi which made India from food deficient economy to worlds leading agricultural country. Furthermore, the Fifth, Sixth Five Year Plan



the agriculture observed annual agricultural growth up to 4.6% and 6% highest ever during plan periods. Be it any government all have tried to put nation's interest first but could not able to meet everyone's expectation at a time, and can be evident by understanding farm bills. Favoring farmers leads to abolition of inter-mediators which means hampering their interest. The agriculture produce market regulation programme was first attracted by the Britishers for supply of raw cotton in United Kingdom. Consequently, the first regulated market (karanja) was established in 1886 for the purpose of sale and purchase. In pursuance of recommendation of the Royal Commission on Agriculture 1928, government of India prepared a Model Bill, 1938 for regulation of marketing practices and establishment of regulated markets and circulated to all states which was not of a huge success. Farmers were immensely exploited in the hands of zamindars and britishers since ages. They were not given adequate and reasonable prices for their produce and were even burdened with loans, interests and tax which was then abolished via various land reforms.

APMC Act, 2003 was formulated and adopted by many states with the view of removing malpractices and imperfections from agriculture markets, to create transparent marketing condition between farmers and traders, to ensure a fair deal to the farmers to sell their produce. Initially the Act was adopted in sixties and seventies by many states with the objective to ensure an environment for fair play, thereby, resulting

in fair price discovery for farm produce and regulate market practices. However, over time, these markets became restrictive and monopolistic and failed to achieve the purposes at broader platform. The central government released the model APMC and contract farming Acts in 2017-2018, in order to allow the restriction-free trade of farmers' produce, to promote competition through multiple marketing channels, and to promote farming under pre-agreed contracts.¹ The Standing Committee (2018-19) noted that many states have not implemented several of the reforms suggested in the model Acts² yet. Thus it recommended that the central government need to constitute a Committee of Agriculture Ministers of all states to arrive at a consensus and design a legal framework for agricultural marketing. The Standing Committee on Agriculture (2018-19) thus observed that the APMC laws are not implemented in their true sense and need to be reformed urgently for smoother functioning. Therefore, the APMC "Act" provides for auction for selling produce of farmers. Generally, MSP (minimum support price) is only for the 22 crops and for the rest of the produce the price is discovered as per the demand and supply in the market. Since society is dynamic so the law is, and if any discrepancies arises in law which does not able to meet the requirements of the present society then such discrepancies are liable to be removed. There were few states and union territories who did not adopted the APMC Model. So, In order to bring uniformity the centre derived its exclusive power through constitution under Article 248.³

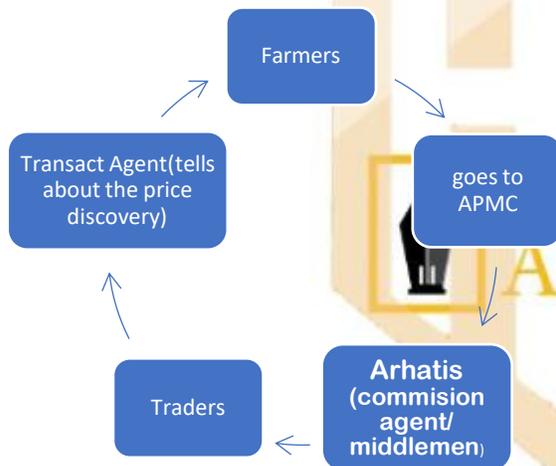
¹ F.No. T-14018/23/2016/MDRC- CF Ac, GOI ministry of agriculture & FW, department of agriculture, cooperation & FW, New Delhi, Model Contract Farming Act 2018.pdf.

² Report No. 8 standing committee on agriculture, seventeen Lok Sabha (2019-2020) committee report 2018-19.pdf 17th.pdf.

³ 248. Residuary powers of legislation



During 1991, government initiated the LPG policy i.e. liberalization, privatization and globalization aiming to boost competition by encouraging private sector and to develop a global market in order to strengthened the economic development. Privatization of any business means to maximizing profit which is somewhere crucial in the developing countries. Similarly, as per the standing committee report suggested that there should be robust markets adequately equipped with participation of private sector in order to overcome the limitations and constraints of present agricultural marketing system and to develop a competitive, transparent and barrier free markets with the choices to the farmers to sell their produce in the markets and to the buyers offering better price to them in transparent manner.⁴



Therefore in all these long process farmers have to pay market fees that usually of 3% but vary state to state and not even able to get the half price from the final cost of what the consumer is purchasing. The market fee as

reported by standing committee 2018-2019 should be paid by traders and not by farmers.

Explaining the Constitutionality of three Farm Act-

The President of India promulgated three ordinances on 5th June, 2020 amidst covid-19 when the whole world was suffering from food shortage, unemployment, medical necessities and what not. The intention to pass these bills was to strengthening the agricultural sector vis a vis an economy of the country⁵. The power is conferred upon the President by Article 123 of the Indian Constitution to pass the ordinances. For any bill to become an Act requires the requisite voting in the parliament. On 14th September, 2020, the central minister of agriculture and farmers welfare introduced the two bills in the parliament. The bills were passed by the Lok Sabha without a hurdle. Thereafter, in Rajya Sabha, the bill faced strong resistance from the opposition and created ruckus in the house as the opposite members wanted to refer the bills to a select parliamentary committee for scrutiny over certain provisions in order to avoid any confusions. But, the Honourable chairman rejected all the objections, suggestions and demands raised by the opposition members as they wanted a division vote for the bill rather a motion of voice vote. Intense debate and deliberation over a bill is a democratic essence. Therefore, it is important to uphold our democratic system wisely by any government.

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

⁴ 62 report of standing committee on agriculture 2018-2019, at sixteenth Lok Sabha, January 3, 2019.

⁵ Press Information Bureau, Ministry Of Home Affairs.

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A wide debate is going on over the source of authority to pass these laws. Article 246 under the Constitution, there is three-fold distribution of legislative power between Union and States, made by the three lists in the Seventh Schedule. The demarcations of subject matter in these lists are clear and rigid, therefore it can be seen under list II that, agriculture is a state subject under Entry 14 which states “Agriculture, including agriculture education and research, protection against pests and prevention of plant diseases.”⁶ Whereas, Entry 33 of list III deals with the trade and commerce of those products of an industry where the control of such industry is by the Union exclusively as declared by the Parliament by law and power is confined to certain foodstuffs. Therefore, agriculture is no where mention in the respective Entry explicitly. Now, whenever such situation arises where any subject matter of one list encroaches or is in conflict with the subject matter of another list then *Doctrine of Pith and Substance* should be adopted. What is pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found.⁷ The objectives of the Farm Acts itself talks about the agriculture produce, farming agreements etc. which clearly makes it fall under the state list and not under the concurrent list. The agricultural market should be added to the Concurrent List, according to the committees led by Ashok Dalwai and Ramesh Chand. The suggestions make it clear that “foodstuffs” under Entry 33 of the Concurrent List do not provide

Parliament the jurisdiction to legislate on agricultural markets. The government informed the Lok Sabha on May 5, 2015, that the National Commission of Farmers (Swaminathan Commission) has recommended adding ‘agricultural market’ to the Concurrent List. The administration told the Lok Sabha on March 27, 2018, that it has no plans to add the term “agricultural market” to the Concurrent List. Nevertheless, Article 248⁸ of Indian Constitution gives exclusive power to Parliament to make any law which is not even enumerated in the concurrent list or state list. Further, Article 249 gives power to Parliament to legislate with respect to a matter in the State List in the national interest.⁹

The three Acts are-

1. The Farmers Produce Trade & Commerce (Promotion & Facilitation) Act, 2020.

As the objective of an Act states that; to promote efficient, transparent, and barrier-free inter-State and intra-State trade and commerce of farmers produce outside the physical premises of markets or deemed markets; to promote efficient, transparent, and barrier-free inter-State and intra-State trade and commerce of farmers produce outside the physical premises of markets or deemed markets notified under various State agricultural produce market legislations; to provide a facilitative framework for electronic trading. There are various provisions enshrined in the Act which are in absolute favor of the farmers.¹⁰

⁶ Entry 14 of list II under VIIth Schedule of Indian Constitution.

⁷ Prafulla Kumar Mukherjee v. Bank of Commerce Ltd; AIR 1947 PC 60.

⁸ Article 248 Residuary powers of legislation, 1950 Indian Constitution.

⁹ Article 249 Power of Parliament to legislate with respect to a matter in the State List in the national interest

¹⁰ The Farmers Produce Trade & Commerce (Promotion & Facilitation) Act, 2020.



Section 4 of the Act allows intra-state and inter-state trade of farmers' produce outside:

- (i) the physical premises of market yards run by market committees formed under the state APMC Acts and
- (ii) Other markets notified under the state APMC Acts. Such trade can be conducted in an 'outside trade area', i.e., any place of production, collection, and aggregation of farmers' produce including: farm gates, factory premises, warehouses, silos, and cold storages.

Section 5 of an Act permits the electronic trading in the specified trade region of scheduled farmers' output (agricultural output regulated under any state APMC Act). An electronic trading and transaction platform might be established to enable direct and online buying and selling of such produce via electronic devices and the internet. Companies, partnership firms, or registered societies with a permanent account number under the Income Tax Act of 1961 or any other document authorised by the central government, as well as a farmer producer organisation or agricultural cooperative society, may construct and operate such platforms.

Section 6 of an Act strictly prohibits state governments from levying any market fee, cess or levy on farmers, traders, and electronic trading platforms for trade of farmers' produce conducted in an 'outside trade area'.

Section 8 deals with Dispute Resolution Mechanism for farmers, which is a three tier system.

Section 11 of the Act deals with the



punishment for contravention of rules enshrined in the Act. The penalty of rupees up to 25000 to 500,000 shall be imposed on those who contravene the provision 4 of an Act. And if still continues to commit the same then shall be charged, Rupees 5000 per day to such contravention. Whereas, whosoever violates the provision 5 and 7 shall be liable to pay Rupees up to 50000 to 10 lacks and if still continues to infringe then shall be liable to pay Rupees 10000 per day to such contravention.

2. The Farmers (Empowerment & Protection) Agreement on Price Assurance & Farm Services Act, 2020.

An Act to establish a national framework for farming agreements that protects and empowers farmers to engage in farm services and the sale of future farming produce at a mutually agreed remunerative price framework in a fair and transparent manner with agribusiness firms, processors, wholesalers, exporters, or large retailers. But, it will at the same time shields the farmers from the rise and fall of market prices, nevertheless there's a provision under the Act, i.e. Section 5(b) of the Act¹¹ which is

any additional amount over and above the guaranteed price, including bonus or premium, to ensure best value to the farmer and such price reference may be linked to the prevailing prices in specified APMC yard or electronic trading and transaction platform or any other suitable benchmark prices: Provided that the

¹¹ 5. The price to be paid for the purchase of a farming produce may be determined and mentioned in the farming agreement itself, and in case, such price is subject to variation, then, such agreement shall explicitly provide for— (a) a guaranteed price to be paid for such produce; (b) a clear price reference for



acting as a guiding provision for an agreement, in order to protect a farmer from price variations after once the contract is formed between the farmers produce and sponser. The Act will also help farmers by reducing the cost of marketing and improve income of farmers, once the big companies contracts with them and thus, farmers will have assurance for selling of their products. It will also enable the farmer to access modern technology, better quality of seeds.¹² **Section 8** of the Act, bars the sponser from interfering into farmers land from acquiring any ownership rights or from any modifications etc. while contract farming.

Section 9 and 15¹³ are the safest for the farmers as farming agreement might be linked with any insurance schemes under state or central government in order to mitigate any risk that might occur during farming and such that farmers or even sponser are not at any loss and no dues shall be recovered from the agriculture land.

The same was recommended by the Swaminathan committee.¹⁴

3. The Essential Commodities (Amendment) Act, 2020.

The Act allows the central government to regulate the supply of certain food items only under extraordinary circumstances (such as

war and famine). Stock limits may be imposed on agricultural produce only if there is a steep price rise.¹⁵

Understanding Farmers protest and its implications worldwide

It is said that half truth is more dangerous than a lie and incomplete knowledge is the worst. According to 2018, National Crime Report Bureau, about 7.7% i.e. 10,349 farmers committed suicide in India. The 2017 NCRB was not even disclosed in public.¹⁶ The farmer's suicide makes a hot news almost every passing year across the country. The major problem that a farmer faces are numerous like, proper irrigation facilities, issue of weather and climate, quality of seeds, pesticides or fertilizers, inadequate storage facilities, interest on arrears, the poor farmers has been left to live in debt, which keeps on multiplying with each passing year. An estimated 58% of farmers go to bed hungry every night.

MSP is the major concerns for protesting farmers but as per the Shanta kumar Committee for reformation in Food Corporation, it was the finding that only 6% of farmers are benefitting from MSP and 94% are not even aware of it. In Gujarat, only 33% farmers are aware of the MSP, in Madhya Pradesh, MSP does not attract farmers at all because of lack of awareness.¹⁷ MSP is a

method of determining such price or guaranteed price or additional amount shall be annexed to the farming agreement.

¹² The Farmers (Empowerment & Protection) Agreement on Price Assurance & Farm Services Act, 2020.

¹³ 15. Notwithstanding anything contained in section 14, no action for recovery of any amount due in pursuance of an order passed under that section, shall be initiated against the agricultural land of the farmer.

¹⁴ M.Swaminathan-Report-Natnl.Common-Farmers-Findings-Recommdms.pdf, 14; no risk fund.

¹⁵ The Essential Commodities (Amendment) Act, 2020.

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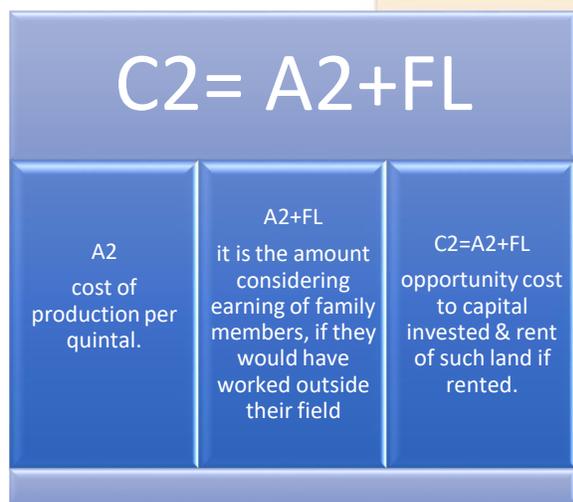
<https://economictimes.indiatimes.com/news/politics-and-nation/10349-farmers-committed-suicide-in-2018-ncrb/articleshow/73173375.cms?from=mdr>.

¹⁷ DMEO Report No. 231, Evaluation study on efficacy of MSP on farmers.



minimum support price which is fixed by the government for major agriculture products each year. MSP is fixed on the recommendation of the commission for agricultural costs and prices (CACP).

According to Swaminathan committee, 2006 recommendation was made with respect to average cost of production. The MSP should be at least 50% more than the weighted average cost of production which means including A2 & FL for attaining final C2 cost¹⁸. Let us understand this.



The ongoing protest that is happening is mainly because of lack of awareness amongst them with respect to farm laws. Let us understand certain prevalent questions around this issue.

Issue 1) The majority are worried that MSP policy will no more exist as government are freeing farmers	The three laws ¹⁹ does not even talk about the MSP policies, even during the round table deliberation
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https://niti.gov.in/writereaddata/files/writereaddata/files/document_publication/MSP-report.pdf

for private companies.	government assured them that this will never happen and is ready to give this in written also.
Issue 2) that, APMC will disappear if the farmers will shift to private markets which will give monopoly to private entities.	APMC will be in existence always, introducing private markets are just for the benefit of the farmers so that they can have more options to sell their produce. As far as the monopoly is concern, my understanding is that law is dynamic and it changes as the society changes, this future prediction should not become a hurdle in maximizing the profit.
Issue 3) that, no consultations was done before enacting the laws.	On this, the reply of government was that these laws are made after the consultations for two decades and reports submitted to the governments regarding farmers situations in the country.
Issue 4) that, farmers exhausted their right to go to	On this, government is ready to consider the problem and will formulate the same

¹⁸ M.Swaminathan-Report-Natnl..Common-Farmers-Findings-Recommdns.pdf.

¹⁹ Supra.



the civil courts for their grievances.	as discussed in round table meeting.
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Many leaders worldwide are in opinion that India's democracy is under threat as people protests almost after enactment of every law. The Indian Constitution being a lengthiest and adoption from world's best constitutions, may it be a British, American or Government of India Act,1935 it fulfills the need of its citizens in well structured manner. Protests are a hallmark of any thriving democracy and is a fundamental right if complied as per article 19, which allows peaceful assemblage without arms and ammunitions. Recently, the International Monetary Fund (IMF) Communications Director Gerry Rice, said India's new farm laws have the "potential to represent a significant step forward" for reforms in the agriculture sector. The step taken will enable farmers to directly contract with sellers, allow farmers to retain a greater share of the surplus by reducing the role of middlemen, enhance efficiency and support rural growth.

Conclusion

The ongoing protest in the country is an alarming situation for each one of us, may it be a opposition political parties or central government. It is important to understand that power cannot be presumed at the cost of innocent lives. Further, the new Act's are very much relevant to the present hour in order to boost up the agriculture sector. The nuances have been already discussed above in brief. To understand that how the protest can be a political trigger its important to know that state government levy tax on produce in APMC which is up to 8%. The centre also gives funds for the development of every state also these states acquires the taxes from APMC and use in its

development. If private entities will come into in existence and taxes will be removed the overall impact can be seen on state funds and its development will surely affect. According to 1st NCF report it suggested for the establishment of farm schools to educate the farmers. It is important for the centre to communicate the laws in a channelized manner.

