

The Truth about Farm Laws: Throwing the baby out with the bathwater?

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“That which has been done well has been done quickly enough.”
~ Augustus (first emperor of ancient Rome)

On 22 January 2021, the prolonged dialogue on the Farm Laws between the agitating farmers' associations and the ostensibly patient government ended in a stalemate. Or is it a checkmate? Again, what happened on the Republic Day, 2021, was it part of the strategy of the movement launched on the Constitution Day, 2020? Only time will tell.

For the time being, the government has offered to put the laws on hold for a year and a half; but the farmers will settle only for repeal, and nothing but repeal, of the three laws, namely the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 (Promotions and Facilitation Act hereafter), the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (Empowerment and Protection Act hereafter), and the Essential Commodities (Amendment) Act, 2020. These Acts, initially promulgated as presidential ordinances on 5 June 2020, were passed by the parliament in September 2021 and received the President's assent on 27 September 2020. The three Acts are collectively referred to as “Farm Laws”.

The Vision

The Farm Laws form part of the Atmanirbhar Bharat package and offer three basic freedoms to farmers. The Promotion and Facilitation Act allows farmers to sell their harvest outside the notified APMC mandis without paying any State taxes or fees. The Empowerment and Protection Act facilitates contract farming and direct marketing. It gives freedom to make forward contracts, transferring the risk to businesses. The Essential Commodities (Amendment) Act, 2020 deregulates the production, storage, movement and sale of several major foodstuffs, including cereals, pulses, edible oils and onion, except in case of extraordinary circumstances. Freedom from the constraint of stocking limit, would act as an incentive for setting up cold storages, among others.

At present the farmers are required to sell crops through licensed commission agents (known as 'arhatiyas' in the Punjab and Haryana) at designated 'mandis' (agri-markets) regulated by the State Governments under their APMC Acts. Commission agents earn 1.5-3% of the sale value for services, including cleaning, sorting, displaying and



auctioning crops, while States earn mandi fees paid by the crop buyers. Government agencies buy produce meeting their quality standards at the MSP during the procurement season that lasts 60 to 90 days. Thereafter, private traders buy the produce through commission agents at market price. About 6% of farmers benefit from MSP.

The government hopes that the Farm Laws will provide farmers with more choice and competition, leading to better prices as well as ushering in a surge of private investment in agricultural marketing, processing and infrastructure. Thus these Acts seek to provide an ecosystem for farmers and traders to sell and buy outside the designated mandis as well as a framework for contract farming, besides exempting certain agricultural commodities from the purview of the Essential Commodities Act.

Farmers' Apprehensions and Government's Response

Various farmers' organisations, a large number of them from Punjab and Haryana as well as certain parts of Rajasthan and Uttar Pradesh, have been camping on various roads bordering Delhi to protest against the

three Farm Laws since 26 November 2020 and asking the government to repeal them.

The major concerns of the farmers, expressed formally as well as informally, and the remedial steps proposed by the government, as reported, are listed in the table below:

TABLE: Farmers' Apprehensions and Government Response →

While 11 rounds of talk between representatives of farmers and the government over a period of about 60 days failed to yield any concrete result, all eyes were on the hearing of the Supreme Court on a batch of petitions challenging the blockade of main entry points to Delhi, among others. The Supreme Court, after an initial hearing in December 2020, had ruled that right to protest is part of a fundamental right and can be exercised so long as it does not result in damage to life and property of other citizens. The court had also suggested formation of an impartial and independent committee of experts in agriculture to hear both sides and make its recommendations. The Court had also asked whether the implementation of the Farm Laws can be put on hold in order to facilitate negotiations.

After further hearings in January 2021, the Supreme Court issued a series of orders. First and foremost, somewhat surprisingly, it stayed the implementation of the Farm Laws until further orders. It also ordered the formation of a four-member committee comprising Bhupinder Singh Mann (Ex-MP Rajya Sabha and National President of Bharatiya Kisan Union), Dr Pramod Kumar Joshi (former director for South Asia, International Food Policy Research Institute), Ashok Gulati (former chairman of the Commission for Agricultural Costs and Prices) and Anil Ghanwat (President of Shetkari Sanghatana) to submit a report on the

SL No.	FARMERS' APPREHENSIONS	GOVERNMENT'S RESPONSE
1	MSP regime for procurement will be scrapped.	Will give written assurance that MSP will continue.
2	APMC mandis will be closed / abandoned in favour private mandis.	APMC mandis will continue. Government is making investments to modernise mandis. State governments can frame rules to register private mandis and levy tax or cess on them on par with APMC mandis.
3	Anyone can trade outside APMC mandis.	States will be empowered to register all traders. Farmers can sell in APMC mandis or outside, as per their choice.
4	Only SDMs, who are already over-burdened, have been authorised to deal with grievances. There is no right to approach civil courts in case of a dispute.	Will provide for appeal to courts.
5	Big corporates will take over farm lands. Land can be seized in case of breach of contract.	The agreement will be for crops, not for land. There will be no transfer of land by way of sale, lease or mortgage (section 8 of the Empowerment and Protection Act). The legislation will be further strengthened to remove doubts.
6	Cannot register agreements under contract farming law.	States have the right to register such contracts.
7	Contractors can rescind agreement on flimsy grounds to avoid making full payment.	The price of the produce will be part of the agreement. Buyers must pay on time or face legal action (section 5 of the Empowerment and Protection Act). Farmers can annul contracts without penalty.
8	There has been no contract farming earlier.	Many states have contract farming; some of them have laws regarding contract farming.
9	There have been no consultations before enacting of laws.	There have been consultations for two decades before the laws were passed.
10	Not to alter the current practice of subsidy under the proposed Electricity Amendment Bill, 2020.	There will be no change in tariff subsidy regime for farmers.
11	Solution on penalty for stubble burning in the Ordinance on air quality management in Delhi and NCR.	Will adequately resolve farmers' concerns.

Farm Laws to the Court after hearing all the parties and stakeholders. However, Bhupinder Singh Mann has recused himself citing the prevailing sentiments and apprehensions amongst the farm unions and the public in general. While setting up the committee the court said: "We are forming a committee so that we have a clearer picture. We don't want to hear arguments that farmers will not go to the committee. We are looking to solve the problem. If you (farmers) want to agitate indefinitely, you can do so."

The Supreme Court refused to pass any orders on the Delhi police's application seeking for an injunction against the tractor rally proposed to be carried out by farmers in Delhi on the Republic Day to show their protest against the contentious farm laws, while allowing it to be withdrawn.

The Context

It is important to contextualise some of the major concerns of the agitators. First and foremost, the farmers want legislation for continuance of MSP. Government announces MSP for 22 mandated crops, and fair and remunerative price (FRP) for sugarcane. The mandated crops are 14 kharif crops, 6 rabi crops and two other commercial crops. Typically, 36% of the production is procured under the scheme, most of which relates to paddy and wheat. Even then barely 12% of paddy growers, for example, benefit from the procurement at MSP. Further, most of the farmers, of whom 86% fall in their small and marginal category, are not benefited from MSP. Again, according to a press release issued by the central government on 8 December 2020, during kharif season of 2020 three States, namely Punjab (57.9%), Haryana (16%) and UP (8.3%), accounted for nearly 82% of total paddy procured. Government procures more than 75% of rice and wheat produced in Punjab and Haryana. These were the only two states where the contribution of rice and wheat to total farm output

exceeded 45% 2019.

As regards APMCs, they are physical markets (*mandis*) regulated by the state governments under their respective APMC Acts. There were, however, only 6630 *mandis* in 2019, where procurement under MSP is done. On an average, one APMC covers a geographical area of 496 km². Most of the small and marginal farmers, given their small marketable surplus, do not find it economical to bear the cost of transport to take their harvest to *mandis*. Thus they end up selling their harvest to a village trader even at a lower price. The freedom to sell outside *mandis* already exists in many states. 18 states have allowed the establishment of private markets outside the APMC; 19 states have allowed direct purchase of agricultural produce from farmers; and 13 states have allowed the establishment of farmers' markets outside APMC. However, no significant private investment has flowed in to establish private markets because of high transaction cost in produce collection and aggregation. In May 2020, a working group on agricultural produce, headed by Bhupendra Singh Hooda, former CM of Haryana, and including CMs of Punjab, West Bengal, and Bihar, had recommended the elimination of monopoly of APMC *mandis*.

As far as contract farming is concerned, the Punjab government had passed the Punjab Contract Farming Act in 2013 to provide for improved marketing of agricultural produce through contract farming of 108 commodities listed in the Schedule and to regulate the development of efficient of contract farming system.

States' Reactions

The ostensible legal argument against the Farm Laws, articulated particularly by the government and the trade of Punjab, is that agriculture and markets are part of the State List of the Seventh Schedule of the Constitution of India

and, therefore, there should be no tinkering with the MSP and APMC, which form the backbone of the existing trading arrangements. The economic reason for the vociferous agitation is that mandi taxes on wheat and paddy fetch the State Government around Rs. 5000 crore a year, apart from earning fat profits for the middlemen (*arhatiyas*).

Be that as it may, on 21 October, 2020 the Punjab State Assembly passed three eponymous laws amending specific sections/clauses in the Parliament's legislations and added new provisions to suit its requirements. Thus no sale of wheat and paddy shall be valid unless the price paid is equal to or greater than the MSP. Section 3 of the Essential Commodities Act has been tweaked *inter alia* to provide that the State Government too will have the power to impose stock limits on food items.

Rajasthan Legislative Assembly too, following the lead provided by Punjab, passed a slew of legislations on the same lines to stall the central legislation. Chhatisgarh had a limited go at them by amending its APMC Act in order to ensure MSP and protect its farmers.

But these three States do not appear to be on the same page. For example, as far as guaranteeing MSP to their respective farmers is concerned, Punjab Acts provide cover only to wheat and paddy crops. Rajasthan Acts refer to MSP guarantee only in case of contract farming. The Chhatisgarh Act is somewhat vague on the issue of giving legal cover to MSP.

The reaction in the southern States has been by and large muted, except for Kerala, where on 31 December 2020 the Legislative Assembly passed a resolution demanding the repeal of the Farm Laws since they lacked the teeth to protect the interest of farmers.

According to the Agriculture Secretary of Tamil Nadu, his State was among the

first in the country to have passed a Bill on contract farming in 2019. The Chief Minister of Tamil Nadu has said that his party supported the Farm Laws as they benefitted them. Supporting the Farm Laws, the Chief Minister of Andhra Pradesh was critical of the Congress party for the system of middlemen. V. Vijaysai Reddy, an MP of YSR Congress, said that the new Acts will end the monopoly of APMC. “By allowing contract farming, a farmer is assured of sale price for his produce at a pre-determined price and the risk is transferred from the farmer to the buyer”, he added. The Chief Minister of Karnataka told the protesters that they should wait for 6 to 12 months to know how the Farm Laws will help them.

The Counter Arguments

The current forms of price support distort the market, cause overproduction of certain foodgrains and are environmentally harmful. The ideal mechanism would be to replace the entire system of subsidies with an all India income support plan. Other alternatives include price compensation scheme that makes up for the difference between the market price and MSP. Government stocks of rice and wheat are already thrice what are needed for buffer stocking. MSP may be retained but must be linked to world prices. It can be a benchmark but not a legal right, since the government cannot pick up the entire produce at a guaranteed price. Moreover, it will increase prices and lower demand. At the same time, farmers should be encouraged to diversify into high-value fruits, vegetables and dairy products which will need much less water than wheat-rice rotation and reduce stubble burning.

As far as APMCs are concerned, the history of regulated markets is instructive. The first such market for cotton was created in 1897, so that textile mills in Manchester could get pure cotton from India. From then till

nearly a century later regulated markets multiplied to close to 7,000 because they offered standard weights, the grading of produce, transparent pricing and so on. The system deteriorated because of poor management practices. Controlled by vested interests, price manipulation, excessive fees and taxes and exploitation of small farmers set in.

India, of course, needs an increase in the density of *mandis*. However, we need not just more *mandis* but also better *mandis*. APMC need internal reform in order to facilitate entry of new players, reduce trader collusion and link them up with national e-trading platform [electronic National Agriculture Market (eNAM)]. The fear of big business taking over agriculture can be countered by farmers organising themselves into cooperatives or farmer-producer organisations (FPO) like Amul. The Paddy Procurement Automation System of Odisha is another example of how steady growth in procurement can be sustained on a decentralised basis without relying on the complex web of traditional *mandis*, middlemen and commission agents.

The central government's reform package is a sincere attempt to improve private participation in the farm trade. Hopes of doubling farm incomes rests on the success of these fledgling reforms and other initiatives like direct benefit transfer, cold chain network and crop diversification schemes. Centre and state governments, therefore, must work together to hand hold farmers through this big shift, which can prove just as momentous and fruitful as the Green Revolution of yore.

The Way Forward

But the new order is already under challenge. The Bharatiya Kisan Union (Bhanu) has moved the Supreme Court for the repeal of the laws. It has argued that the Farm Laws were passed hastily by the Parliament. The implementation of the Acts in their current form will spell disaster for the farming community by

opening a parallel market, which is unregulated and gives enough scope for exploitation of the farmers. Rather than expecting a poor and illiterate farmer to strike a hard bargain and sell his produce to a multinational, the government should infuse more funds into the APMCs and effectively manage the MSP for the welfare of the agriculture sector.

The constitutional wrangle, however, ultimately boils down to interpretation of the relevant provisions of the Seventh Schedule. According to the Statement of Object and Reasons accompanying the Punjab Bills, the Government of Punjab has contended that it was well within its powers to pass the Farm Laws as agriculture, agricultural marketing and land are primarily legislative domains of the State and fall under entries 14, 18, and 28 of List II of the Seventh Schedule. Further, “production, supply and distribution of goods” is also a State subject under entry 27 of List II read with entry 33 of List III (Concurrent List).

The Central Government has not thought it fit to spell out constitutional provisions which empower it to legislate on the subject matter of its two primary legislations in the Statements of Objects and Reasons accompanying the Bills. However, the Parliament seemingly derived legislative competence under entry 33 of the Concurrent List, which deals with “trade and commerce in and the production, supply and distribution of” certain commodities, including “foodstuffs”, coupled with the definitions of “farmers' produce”, and “farming produce” in the Acts, which borrow and expand on the provisions of the said entry.

According to the experts, the State Acts are ultra vires as the States legislatures do not have the power to alter or modify any central legislation framed under the Concurrent List. Therefore, until the Governor and then the President of India give their assent to these Bills, the

central legislation shall prevail.

The Supreme Court has, *prima facie*, set up an expert committee to examine the matter. It is like to pass on the report of the committee to the government with such observations as it may deem fit.

Let us also take a call on the government offer to stay the implementation of the Farm Laws for a year and a half. It is not quite clear as to how government propose to do it in case the offer is accepted by the protesting farmers' associations. Sub-section (2) of section 1 of each of the three Acts uniformly states: "It shall be deemed to have come into force on the 5th day of June, 2020". Thus the implementation of Acts is already on, it cannot be put on hold by an executive order. The Acts will need to be amended for the purpose to state that they shall come into force as and when notified. While doing so a cover for the actions already taken under the Acts would need to be provided. However, normally this is done under the section heading 'Repeal and savings'; but the government is averse to repealing the Acts, which complicates the matter.

If an agreement is reached for specific amendments to the Acts, in addition to the changes pertaining to the concerns

voiced by the farmers, government would do well to take into account risk mitigation and market manipulation. Moreover, the government may also take note of the experience of other developing countries in this regard. At the same time, Farm Laws, at the minimum, should give the option to the States to notify various provisions at their convenience in order to facilitate gradual and calibrated implementation of reforms, because it would appear that the farmers have reservations more about the implementation of the Farm Laws than the laws per se. Another soft option available to the central government is inclusion of paddy and wheat in the *Pradhan Mantri Annadata Aay Sanrakshan Abhiyan* (PM-ASHAA) to make those crops eligible for deficiency price payment, which, as of now, is applicable to pulses and oilseeds.

Moving to the other end of the spectrum, since agriculture is primarily a State Subject and agriculturists have to deal mainly with State authorities, another alternative available to the central government is to propose Model Acts (like the Model APLM Act, 2017 and the Model Contract Farming Act, 2018) and let the states adopt them with local modifications. Thus, if a few states adopt the Model Acts, the farmers in

other states, after watching the flow of benefits, will push their own states to adopt them. Of late, FPOs have been created all over India and many, especially in Telangana, Andhra, and Maharashtra, are doing well. One of their main jobs is sale and marketing of farm produce, particularly of small and marginal farmers. These FPOs need to be strengthened under the new Farm Laws.

A PIL has been filed in the Supreme Court by Ashwini Kumar Upadhyay, advocate, in the context of the Farm Laws, demanding that the draft of all central and state legislations should be put on the government website 60 days before they are table in the Parliament / State Legislature to invite comments and suggestions from the public.

Occasionally, one has to take one step backward in order to move three laws forward. Sometimes, going back to the drawing board too could be edifying. ■

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