LITERATURE REVIEW ON FARM BILLS, 2020

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ABSTRACT

It cannot be denied that the existing agricultural market machinery is in the need of reforms for the welfare of the farmers. However, the recent Farmer Bills introduced by the Union Government and passed by the Parliament; faced strong opposition from various entities. Taking the ordinance route during the COVID-19 pandemic and hastily passing the Farmer Bills in both the Houses; raises questions as to the real intention of the Government.

The Farmer Bills aim to give farmers the freedom to sell to any buyers outside the APMC premises; enter into contracts with buyers directly and lifts restrictions on stock limits to incentivise private investment in agriculture. The Farmer Bills, however, seem promising on paper but doesn't acknowledge the practical difficulties associated with the proposed set up.

Keywords: Farm Bill, Indian Economy, Economics, Acts, Covid-19, Indian Population, Trading, Commerce, State Laws, Agriculture

INTRODUCTION

Approximately 58% of India's population is dependent on agriculture as their primary source of livelihood, which includes 70% of rural households, with 82% of these being small and marginal farmers. According to the Farm Census 2015-16, about 86.2% of small and medium farmers owned less than 5 acres of land.

The agrarian population has often been at the receiving end of the consequences of mistimed policies of the Government. The agricultural sector has been ignored despite being the primary source of livelihood of the majority of the population. This sector has faced economic, social and environmental neglect resulting in vast-ranging problems in the overall development of the country.

In June 2020, the Central Government introduced three ordinances aiming at far-reaching agricultural reforms in the country. Government has stated that the objectives of the Act are to; Freeing up curbs on trade, liberalising regulatory system, providing barrier-free trade and creating a farmer-friendly environment.

The provisions of these ordinances will override all State laws in this regard. However, the ordinances have been met with strong opposition from the farmers as well as the commission agents, who have taken to the streets demanding a rollback of the ordinances. These were introduced as Farmer Bills in the Parliament in the Monsoon Session and have been passed by both the Houses in September amid strong opposition.

THE 'REFORMS' UNDER FARMER BILLS

The Farmers' Produce Trade and Commerce (Promotion And Facilitation) Bill, 2020

There are far-reaching implications of the Farmers' Produce Trade and Commerce Bill, 2020, particularly with respect to Punjab and Haryana. Greater choice in selling their agricultural produce increased remuneration and attracting large scale private investment into agro-businesses are the stated aims of this Bill.

Trade Outside Market Premises:

By permitting barrier-free intra-state and inter-state trade, the Bill seeks to pave the way for 'One Nation, One Agriculture Market'. In a nutshell, it provides that a buyer can purchase farm produce directly from the farmer outside the physical premises of the market committees formed under the state Agricultural Produce Market Committees and mandis.

Abolition of Market Fee:

Any such transactions made outside the physical space of the markets would be exempted from all taxes or fees associated with the state APMC. Furthermore, buyers will not require a license to purchase farm produce directly from the farmers.

Electronic Trading:

The Bill further allows any person who has a PAN card to establish and operate an electronic trading and transaction platform for the facilitation of direct and online trade of agricultural produce in the trade area.

***Dispute Resolution*:**

The Bill provides for the setting up of Conciliation Boards by the Sub-Divisional Magistrate for arriving at mutually acceptable solutions in cases of disputes arising out of transactions between farmers and traders.

The Farmers' (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020

Essentially, the Bill seeks to regulate contract farming that will permit farmers to trade their agricultural produce outside the APMC through a national framework that seeks to protect and empower farmers for engaging with agro-business firms, large retailers, exporters of farm produce, without fear of exploitation.

Conditions and Pricing of Agricultural Produce:

The agreement itself must contain the price of farm produce and the conditions for compliance with mutually acceptable quality, grade and standards. In case of the price being subject to variation, the agreement must specify a guaranteed price and any additional amount above the guaranteed price. Furthermore, it must also specify the process used for the determination of price.

Dispute Resolution:

The Bill prescribes that every farming agreement must provide for a conciliation process and conciliation board in respect of any disputes arising from the agreement. The board shall consist of representatives of parties to the agreement. The other authority for deciding disputes relating to farming agreements is the Sub-Divisional Magistrate.

The Essential Commodities (Amendment) Bill, 2020

Through the Essential Commodities (Amendment) Bill, 2020 section 3(1A) has been inserted to the Act which empowers the Central government to regulate the supply of specified food items only in extraordinary situations. It aims to protect and enhance the farmers' income as well as the interest of the consumers.

Regulation of Food Items:

Supply of certain food items including cereals, pulses, potatoes, onions, edible oilseeds and oils may be regulated by the Central government only under extraordinary circumstances. Such extraordinary circumstances may include famine, war, grave natural calamities and extra-ordinary price rise. The Bill aims at removing existing stringent restrictions on stocks, movement and price control of agricultural foodstuffs for attracting private investment.

Stock Limit:

The Bill prescribes that the basis for imposition of stock limits shall be price rise and applicable only in cases of a 100% increase in the retail price of horticulture produce or 50% increase in the retail price of non-perishable agricultural foodstuffs. Price rise shall be evaluated in relation to the price prevailing immediately preceding 12 months or average retail price of the last 5 years, whichever is lower.

Exclusion:

Any orders regulating stock limits would not be applicable to processors or value chain participants of agricultural produce if their stock limit does not exceed the overall ceiling of installed processing capacity or demand for export (in case of exporters).

KEY CONCERNS

At the outset, the Farmer Bills are being viewed by state governments as direct encroachment on the powers and functions of the state as agriculture and markets are State subjects under Entries 14 and 28 respectively in List II of the Constitution of India. They are seen as going against the spirit of cooperative federalism and the federal polity enshrined in the Constitution. However, the Central government has argued that trade and commerce in food items fall under Entry 33 in the Concurrent List, hence attributing constitutional propriety to the Farmer Bills. Although in accordance with Entry 33 inter-state trade in food items would be subject to Central legislation, any laws directly affecting intra-state trade are a direct interference with state powers and seriously curtail the efficacy of state legislations on matters listed under the State List. It has been pointed out in the Sarkaria Commission Report on Centre State Relations that Entry 33 has been used by the Centre to disproportionately empower itself in matters relating to agriculture. Since the Farmer Bills have an overriding effect over State acts, questions regarding violation of the federal structure of the Constitution have arisen. The Central government is bound to respect the autonomy of states in a federal structure and any constraint on their powers and finances is ill-advised.

Another concern that has arisen is as to why the stakeholders viz. the farmers, commission agents, and states were not consulted prior to the introduction of the Farmer Bills in the Parliament. Those who stand to lose most from these Farmer Bills were not permitted to participate in discussions on the subject, and the government has hastily passed the Farmer Bills in the Parliament despite strong opposition.

Key Concerns arising from the Farmer Bills individually:

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020

There are three primary and interconnected issues that the farmers fear in relation to the Farmers' Produce Trade and Commerce Bill. These are:

i. End of Minimum Support Price?

ii. End of the existing APMC system?

iii. Loss of revenue and livelihood.

Losing the MSP is the biggest fear of the farmers. They fear exploitation by the large private players through hoarding and other malpractices. There is also apprehension regarding the dismantling of the existing traditional grain markets with the establishment of private grain markets, which points to the end of the assured procurement of food grains at MSP.

The farmer unions have responded to Centre's 'one nation, one market' call with 'one nation, one MSP'. The aim of the Farmers' Produce Trade and Commerce Bill is to bring the monopoly of the APMCs to an end and give farmers the freedom to sell their farm produce to private persons.

However, even under the current system farmers are already free to sell to anyone, as most APMC acts contain exclusion clauses. Therefore, freedom to sell outside the APMC controlled mandis were never curtailed by these acts, and APMC laws only regulate the first transaction between farmers and the buyer- not the trade that followed.

Many states, including Punjab, have amended their APMC Act in accordance with 2017 Model APMC Act and provide for setting up of special and private market yards for purchase directly from farmers. Furthermore, according to NSSO data and data from regulated markets in India, mandis account as marketing channels for around 36% of the farmers, depending on the commodity.

This is clearly indicative of the fact that much of agricultural trade was happening outside the regulated areas anyway, it was, however, restricted in scope. While trade outside mandis was required to be decriminalised it cannot be understood to mean deregulation.

Although the APMCs are not explicitly dismantled or the mandis explicitly abolished by the Bill, farmers and experts reasonably apprehend that the entire mandis network and MSP system will become redundant as the Bill has an overriding effect over state APMC Acts.

The APMC system in Punjab has contributed a great deal towards the Green Revolution and the state already has a well-developed infrastructure for the purposes of storage, transportation from farm to mandis and open marketing.

Implementation of the Bill will eventually pave the way for disbanding of the MSP regime as well as the food procurement regime. At present, procurement by the government pressurizes the implementation of Public Distribution System, which will be jeopardized as a result of reduced government intervention.

The basis for market intervention by the government for procurement is price intelligence from mandis which initiates government intervention when prices start crashing. The new Bill will result in lack of information on market transactions, quantities and prices with the government, in a way facilitating the government to abdicate its responsibility of assuring MSP and PDS.

Mandi system will also be rendered irrelevant, therefore, resulting in a collapse of the price intelligence mechanism. Expansion of public procurement at remunerative MSP is what the farmers are demanding whereas the government is doing the opposite. Although the government has verbally ensured that these systems will remain intact, these will do so only on paper and be rendered redundant in the application by the legislations.

Another provision of the Bill (section 6) provides for the waiver of market cess, fee or levy for all transactions made outside the APMC premises. This provision aims at incentivising traders to purchase farm produce outside mandi premises. However, such incentives will not alter the power relation as it only harmfully affects the collective bargaining power of the farmers.

APMCs certainly have shortcomings of their own; however, their role in ensuring the availability of an MSP for farmers cannot be overlooked. APMCs provide a platform for farmers for collective bargaining not only on price matters but also on non-price issues like grading, moisture measurement, weighing etc.

Creation of two parallel and extremely distinct markets, with a different set of rules, is one of the key problems with this Bill, which will eventually lead to the collapse of the APMC. This is because the APMCs have stringent requirements of a license, constant monitoring as well as the market fee, whereas the new private marketplace will be unregulated, lack government oversight and market fees.

Furthermore, this will be detrimental for states as a large part of the revenue is generated from fees or cess on transactions in farm produce in APMC markets. This revenue is utilised by states for developing rural roads and linkages with mandis.

Revenue collected by Punjab in 2019-20 from trade fees was estimated at Rs 3,600 crore. A 2.5% commission is paid by Food Corporation of India to arhtiyas under the Punjab APMC Act. The livelihoods of these arhtiyas as well as the workers engaged in loading, packing and unloading activities are also at stake with the disintegration of the mandi system.

One objective of the Farmer Bills was to eliminate the middlemen who are responsible for the exploitation of the farmers. However, attributing only a negative role to these commission agents is not correct as farmers often resort to them for loans instead of banks for the fear of losing their land to banks and also because banks are hesitant to lend to small farmers.

Furthermore, it is likely that the reforms do not do away with middlemen at all as the same and newer entities will now have the freedom to operate outside the mandis without any regulations. Additionally, giving due regard to the small scale of landholdings of farmers in Punjab and

Haryana, it does not seem as if the large private corporations would deal directly with the small and marginal farmers, consequently resulting in the emergence of middlemen and contractors.

Moreover, the National Agriculture Market or eNAM had been launched by the Central Government in 2016 which is a pan India online trading platform which networks the existing APMC mandis to create a unified national market for agricultural commodities.

As of 31st August 2020, the total number of registered stakeholders (traders, farmers, commission agents, FPOs) on eNAM was 1.69 crores. Therefore, an electronic trading platform for the sale of agricultural produce anywhere already existed prior to the Bill.

This system is dependent on the physical mandi system and without much trade-in mandis, uncertainty as to farmer participation in eNAM also arises. This Bill also raises a question as to the fate of the eNAM once private electronic trading platforms are established by private players.

Although the new Farmer Bills will permit UP farmers to sell their produce in Karnataka if they get better remuneration prices, it fails to take into consideration the practical problems with such a model. According to the 2015-16 Agricultural Census, almost 86.2% of small and medium-scale farmers owned less than 2 hectares of land.

Keeping their small landholdings and farm output in mind, it does not seem feasible for these farmers to sell their agricultural produce outside their mandi or district when MSP is not a legal guarantee. The MSP system acts as a benchmark for farmers to negotiate their prices and APMC system is an important medium for price discovery at the local level. Further, for a large number of small and marginal farmers, who would never be attractive to corporate buyers, APMC mandis are the last resort.

It would be pertinent to refer to the Bihar model after the repeal of the APMC Act in 2006. Aimed at enabling free private trade in agriculture in Bihar, the new system failed to help either help the farm or boost private investment in the development of agriculture.

Year after year the farmers have been forced to distress sell their produce much below the MSP. Full control of agricultural produce has been assumed by private traders, who have set up small markets and charge commission from farmers. Farm produce is purchased at a rate well below the MSP and sold by such traders in other states at higher prices.

Another aspect that the Bill seems to ignore is that these farmers lack sufficient capital, understanding of free-market forces, price and market fluctuation as well as electronic and internet connectivity. Lack of storage facilities with farmers will also coerce the farmers to sell their products to corporations at lower prices, soon after the harvest.

Private traders might also insist on purchasing produce immediately after harvest when prices are low. There is also a possibility that corporations will buy food grains from states with surplus grains, like Punjab, at lower prices and sell these at a later time to grain deficient states at higher prices, resulting in market distortion and reduced income for farmers.

In a state like Punjab, the average size of landholding is 3.62 acres, average farming debt for a small farmer is Rs 5,57,000, for a marginal farmer is Rs 2,76,000. Burdening the small and marginal farmers with complexities of electronic trade and commercial technicalities, while weaning away the MSP, would not be a wise move.

Despite the raging COVID-19 pandemic in April-May, exemplary management skills were displayed by Punjab in procuring 100% of the produce. Out of the 127.45 lakh tonnes of wheat purchased in mandis in Punjab, only 0.58% was bought by private traders.

THE FARMERS' (EMPOWERMENT AND PROTECTION) AGREEMENT ON PRICE ASSURANCE AND FARM SERVICE BILL, 2020

Three primary concerns arise with respect to this Bill on contract farming. These relate to:

i. The negotiating power of the parties involved.

ii. Determination of quality parameters by the parties involved.

iii. Dispute Resolution beyond ambit of judicial review.

Although the Farming Agreement Bill aims at protecting farmers against price exploitation and increasing choice in the sale, it does not take into account that individual farmers, especially small or marginal farmers (who constitute 85% of rural farmers), might not be equipped to negotiate with private corporations to ensure themselves a fair price.

As a consequence of the adoption of contract farming policy, the power balance shifts from the farmer to private companies, and the farmers might end up being the weaker players in the negotiation process. A farmer might be pushed to become a land-owning tenant under the interest of corporates.

The Bill does not provide any mechanism for price fixation, leading to apprehension regarding the intent behind giving a free hand to these private corporations. Further, there is also a concern regarding the multitude of agreements as landholdings are small in states such as Punjab and Haryana.

Although protection against exploitation is a stated objective of the Bill, how can a small and marginal farmer not be fearful of exploitation while engaging with large retailers and powerful industrialists?

Furthermore, according to the provisions of the Bill, the quality and grade measures and standards of farming produce can be mutually agreed upon by both the parties to the agreement. However, if and when the private sponsors attempt to bring in uniformity, the quality aspect might be affected, consequently impacting the already distorted agro-ecological diversity in India.

Another concern that arises relates to the three-tiered dispute settlement prescribed by the Bill, first, a conciliation board, second, the Sub-divisional Magistrate, and third, the Collector or Additional Collector as the Appellate authority.

Farmer-buyer contracts will effectively be removed from the ambit of civil courts, as well as judicial review, by the creation of bureaucrat led dispute resolution mechanism. The usage of "shall" in the Bill points to the mandatory nature of these provisions. Additionally, the majority of farmers lack the resources required for fighting legal battles against large private corporations.

THE ESSENTIAL COMMODITIES (AMENDMENT) BILL, 2020

One of the foremost concerns that have arisen in relation to this Bill is regarding hoarding and black marketing. Since the Bill eases the restrictions imposed on stock limits relating to the prescribed food items, there is increasing fear of hoarding of food items by exporters, processors and traders during harvest season when prices are lower until a later time when prices tend to increase.

Since states would no longer have information and intelligence about the availability of stocks within the state, this could also result in undermining food security, in addition to adversely affecting the interest of both the farmers and consumers.

The Bill has no substantial benefits for either the consumers or the farmers; it legally permits private companies to stock food items without restrictions on the stock limit except in circumstances of war, grave natural calamity, extraordinary price rise etc. The Bill is likely to affect the prices of food commodities resulting in rising in prices, adversely affecting the consumers as well as the subsidies for PDS.

Serious food problems are likely to arise during extraordinary circumstances as the government will not have the requisite information relating to who, where, when and how much stock exists in the state. There will be no machinery to verify the stock limits in the circumstances specified for regulation.

Furthermore, the Bill also provides for the exclusion of value chain participants if their stock limit remains within their installed capacity and exporters if they can show demand for export. However, the rationale behind such exclusion is unclear as to when extraordinary situations may arise an essential commodity like food must not be adversely affected and smooth supply must be maintained.

Additionally, there is no machinery for ensuring and verifying that these value chain participants and exporters are limiting their stocks in accordance with the rules prescribed.

The Central government has discretion, even in extraordinary circumstances to exercise regulation as can be understood from the use of "may". Furthermore, "extraordinary circumstances" have not been clearly defined which "may" include famine, war, natural calamities of a grave nature and extraordinary price rise.

Such ambiguity in legislative drafting raises questions regarding the intention of the statute. It is pertinent here to refer to the recent ban on the export of onions amid the increasing price of onions. Such a decision casts doubt on the implementation of the Bill.

FEASIBLE PROPOSITIONS OF FARMER BILLS

Social, economic, political and cultural contexts of each state will determine the implications these Farmer Bills have on the farmers and states. Implementation of the reforms will play a major role in determining the efficacy and benefits of the reforms. Stare supervision will be necessary for protecting the interests of the farmers as well as the consumers.

Agriculture in India is subject to the twin problems of floods and drought simultaneously and in such circumstances, there is a necessity to protect the income of the farmers. Legislations protecting farmers from crop damage and loss caused by drought, floods and cyclones and ensuring income in such calamities through state support are imperative in India.

The critical nature of remunerative prices for farmers must be realised and a statutory framework must be developed for guaranteeing the same.

The Commission for Agricultural Costs and Prices in its report had highlighted the role of government intervention for ensuring remunerative prices to farmers and suggested to make MSP a legal right.

The Union government has tried to alleviate the fears of the farmers by verbally guaranteeing the continuation of the MSP mechanism, however, it has been hesitant to add such guarantees to the text of the Farmer Bills.

Giving legal backing to MSP as a right of the farmers may go a long way in instilling trust in government policies. The Swaminathan Committee had advocated for increasing the MSP at 50% higher than the cost of production.

The aim of reforms, therefore, should be widening the scope of MSP and making it a legal right rather than making it redundant through new policies, which has been a continuous demand of the farmers for years.

It is also suggested that instead of slowly and indirectly destroying the APMC regime, what is required is strengthening of the existing system. Reforms should be introduced to improve APMC infrastructure as the small and marginal farmers, incapable of attracting corporate traders, turn to mandis as their last resort.

Better road connectivity, transport facilities, climate-controlled storage facilities, electricity supply are also prerequisites for drastic improvements in agriculture. Agriculture based on market forces is futile without realistic investment in agriculture infrastructure. Additionally, the majority of farmers cannot contribute meaningfully to market-driven agriculture as their landholdings and output are too small.

Furthermore, the slow death of the APMC will consequently result in the failure of the eNAM as it is dependent on the physical APMC markets for electronic trade.

There is a need to reform the existing APMC markets and sub-markets, rather than dismantling it indirectly, and also for the creation of new markets so as to reduce the burden on existing ones.

In a state like Punjab where the issue of farmer suicides is continuously on the rise, state intervention gains importance to prevent exploitation by private entities, assurance of a fair price for their produce and reducing indebtedness.

One of the most important steps that need to be taken is a discussion with the concerned stakeholders. Time-bound, wide-scale consultations to address all concerns regarding the Farmer Bills is a necessary step in order to conform to the spirit of democracy and cooperative federalism.

Climate change and pollution have also negatively impacted crop health and it is estimated that production of wheat, paddy, maize, cotton and potato and other crops is likely to be adversely affected.

Wheat production is likely to fall by 23% by 2050 in the absence of proper intervention. Moreover, environmental concerns arising from agriculture like greenhouse gas emissions, stubble burning and depletion of underground water tables also contribute to climate change and necessitate reforms in agricultural practices.

Immediate action is required to be taken by the government to encourage organic farming, give incentives and subsidies for adopting sustainable agricultural practices.

The basis for evaluating a policy must be its urgency and importance. Removing hunger among farmers, pulling them out of debt traps, ensuring fair remuneration for food produce and maintaining the ecological balance are the most pressing issues at present instead of introducing new plans for attracting new investors. Selling the interest of the farmers to corporates is not likely to make India 'Atmanirbhar'.

CONCLUSION

Agrarian distress has been persistent in India due to a number of factors including low productivity, lack of storage and transport facilities, heavy indebtedness and fragmented landholdings. Subjecting the fate of farmers to the vagaries of market forces cannot be the only way to uplift the agriculture sector.

Experience from other nations has revealed that corporatisation of agriculture could further instigate the depression of the farmers. Replacement of one flawed model with another flawed model is not the solution.

The agriculture sector requires stability, whereas the new model will only introduce more price volatility by introducing market forces. Even in the existing system, as it will be in the new system, the farmer never gets to decide the price of his farm produce, it is decided by another person for him and is subject to extreme fluctuations. There is an urgent need to address the apprehension of the concerned stakeholders and to reassess the existing policies.

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