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FARMS PRODUCE BILL 2020: A CRITICAL ANALYSIS

Introduction

It cannot be refuted that the existing agricultural market machinery is in the need of reforms for the welfare of the farmers. However, the recent Farmer Bills which has been introduced by the Union Government and passed by both the houses of Parliament has faced and is still facing a strong opposition from various entities.

Further, taking the ordinance route during the COVID-19 pandemic and hastily passing the Farms Bills in both the Houses has also raised questions regarding the real intention of the Government.

The aim behind the Farms Bill is to give farmers the freedom to sell to any buyers outside the APMC premises; enter into contracts with buyers directly and it also removes restrictions on stock limits to incentivise private investment in agriculture. The Farmer Bills, however, may seem promising on paper but doesn't acknowledge the practical difficulties associated with the proposed set up. Thus, the main purpose of this article is to critically analyse the Farms Bill 2020.[1]

Farms Produce Bill 2020

In order to introduce Farms Bill 2020 the central government promulgated three Ordinances on June 5, 2020:

i. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020,

[1] Kirpen Dhaliwal, Critical Analysis of Farms Bill 2020, (27 September 2020), https://lexforti.com/legal-news/farmer-bills/

ii. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020,

iii. The Essential Commodities (Amendment) Ordinance, 2020.

All the 3 Bills collectively seek to:

a) facilitate barrier-free trade of farmers' produce outside the markets notified under the various state APMC laws,

b) define a framework for contract farming, and

c) impose stock limits on agricultural produce only if there is a sharp increase in retail prices.

The three Bills together aim to increase opportunities for farmers to enter long term sale contracts, increase availability of buyers, and permits buyers to purchase farm produce in bulk.[2]

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

According to this new law, farmers can now sell their produce not just in the APMC approved mandis or market places but anywhere i.e., they can sell their produce both inter-state and intra-state, or if they wish they can also sell it online.[3] There are 3 major elements under this ordinance, which are:

- **Trade of farmers' produce:** According to this Bill farmer's are allowed to do both intra-state and inter-state trade of their produce outside:
  i. the physical premises of the markets which are run by market committees formed under the state APMC Acts, and
  ii. other markets notified under the state APMC Acts. Such trade can be carried out in an 'outside trade area', i.e., any place of production, collection, and aggregation of farmers' produce which includes: (i) farm gates; (ii) factory premises; (iii) warehouses; (iv) silos; and (v) cold storages.

[2] The Farmer's Produce Trade and Commerce (Promotion and Facilitation) Bill 2020, https://www.prsindia.org/billtrack/farmers-produce-trade-and-commerce-promotion-and-facilitation-bill-2020

[3] S A Rishikesh, A Critical Analysis of Farms Bill 2020, (16 October 2020), https://www.latestlaws.com/articles/a-critical-analysis-of-the-farm-bills-2020/

- **Electronic trading:** The Bill allows the electronic trading of scheduled farmers' produce i.e., the agricultural produce which is regulated under any state APMC Act, in the specified trade area. An electronic trading and transaction platform can be set up to facilitate the direct and online buying and selling of such produce through electronic devices and internet. Such online platforms can be established and operated by following entities:
    i. companies, partnership firms, or registered societies, having permanent account number under the Income Tax Act, 1961 or any other document notified by the central government, and
    ii. a farmer producer organisation or agricultural cooperative society.

- **Market fee abolished:** The Ordinance also prohibits state governments from levying any market fee, or cess on farmers, traders, and electronic trading platforms for trade of farmers' produce conducted in an 'outside trade area'.[4]

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

Under this Bill farmers can enter into 'written agreements' with anyone, including a company, and sell them their produce for a set period of time, as per the contract. They can set the price for the produce, the standards and qualities and other legalities can be stated beforehand. According to the Union government this Bill will act towards protecting and empowering the farmers to sell to anyone a whole seller, a retail giant or an exporter. They should have written contracts which will protect the farmer in case the buyer tries to cheat them and also they can also sell their future produce today.[5]

- **Farming agreement:** The Bill provides for a farming agreement between a farmer and a buyer prior to the production or rearing of any farm produce. The minimum period of an agreement will be one crop season, or one production cycle of livestock and the maximum period will be five years, unless the production cycle is more than five years.

[4] The Farmer's Produce Trade and Commerce (Promotion and Facilitation) Bill 2020, https://www.prsindia.org/billtrack/farmers-produce-trade-and-commerce-promotion-and-facilitation-bill-2020

[5] S A Rishikesh, A Critical Analysis of Farms Bill 2020, (16 October 2020), https://www.latestlaws.com/articles/a-critical-analysis-of-the-farm-bills-2020/

- **Pricing of farming produce:** The price of farming produce should be mentioned in the agreement and with regards to the prices which are subjected to variation, a guaranteed price for the produce and a clear reference for any additional amount above the guaranteed price must be clearly given in the agreement. Further, the process of price determination should also be mentioned in the agreement.
- **Dispute Settlement:** A farming agreement must provide for a conciliation board as well as a conciliation process for settlement of disputes. The Board ought to have a fair and balanced representation of parties to the agreement. At first, all the disputes should be referred to the board for resolution. If the dispute remains unresolved by the Board even after thirty days, the parties may then approach the Sub-divisional Magistrate for resolution. Parties will also have a right to appeal to an Appellate Authority (presided by collector or additional collector) against decisions of the Magistrate and then both the Magistrate and Appellate Authority will be required to dispose of the dispute within thirty days from the receipt of application. The Magistrate or the Appellate Authority may impose certain penalties on the party breaching the agreement. However, they can take no action against the agricultural land of farmer for recovery of any dues.[6]

The Essential Commodities (Amendment) Ordinance, 2020

Essential Commodities Act was first enacted in the year 1955. The Act basically controlled the production, supply and the distribution of certain commodities that are known to be essential. So if an item that comes under the purview this Act cannot be hoarded by companies and supermarkets when there is a shortage of these items, also they cannot increase the prices artificially etc. the list of essential commodities as per the original act included: Drugs (medicines), Fertilizers (inorganic, organic, mixed), Foodstuff (including edible oilseeds and oils), hank yarn made wholly from cotton, Petroleum and petroleum products, Raw jute and jute textiles, Seeds (food crops, fruits and vegetables, cattle fodder and jute seeds). However, the new amendment has removed food stuff such as Potato, Cereals, Pulses, edible oilseeds and oils, from the list of essential commodities which means

[6] The Farmer's Produce Trade and Commerce (Promotion and Facilitation) Bill 2020, https://www.prsindia.org/billtrack/farmers-produce-trade-and-commerce-promotion-and-facilitation-bill-2020

that unless there is a crisis situation like a war or famine or an extraordinary price rise these commodities will not be considered under the essential commodities list. [7]

- **Regulation of food items:** The Essential Commodities Act, 1955 empowers the central government to designate certain commodities (such as food items, fertilizers, and petroleum products) as essential commodities. The central government can regulate or forbid the production, supply, distribution, trade, and commerce of such essential commodities. The Bill states that the central government may regulate the supply of certain food items including cereals, pulses, potatoes, onions, edible oilseeds, and oils, only under extraordinary circumstances. These include: (i) war, (ii) famine, (iii) extraordinary price rise and (iv) natural calamity of grave nature.
- **Stock limit:** The Ordinance requires that imposition of any stock limit on agricultural produce must be based on price rise. A stock limit can be imposed only if there is: (i) a 100% increase in retail price of horticultural produce; and (ii) a 50% increase in the retail price of non-perishable agricultural food items. The increase will be calculated over the price prevailing immediately preceding twelve months, or the average retail price of the last five years, whichever is lower.[8]

Criticisms

Everything that seems great on paper is not always great when applied practically. Well, there is a difference between good legislation and good implementation of the Act, as many criticisms have been raised regarding this Bill. The very first concern is that this bill when becomes Act is going to be implemented across the whole country but has neither been discussed with states which will be most affected by the Act nor it has been discussed with the experts in this field. And thus have accused the government of destroying cooperative federalism.

The country is witnessing a widespread protest against the Farms Produce Bill 2020. This protest is more intense in Punjab, Haryana and Western Uttar Pradesh. The reason is that region has the most organized form of APMCs. Although the Bill has no provision regarding the removal of APMCs but the farmers are fearing and raising slogans of MANDI BACHAO.

[7] S A Rishikesh, A Critical Analysis of Farms Bill 2020, (16 October 2020), https://www.latestlaws.com/articles/a-critical-analysis-of-the-farm-bills-2020/

[8] The Farmer's Produce Trade and Commerce (Promotion and Facilitation) Bill 2020, https://www.prsindia.org/billtrack/farmers-produce-trade-and-commerce-promotion-and-facilitation-bill-2020

APMCs come under the control of state government and are maintained by the taxes which are collected in APMC market's transaction. According to the Government in private markets, which can be set up after the implementation of the Bill, no taxes will be charged in the transactions of private market so this would save taxes, all companies and traders will buy farm produce from private markets which will consequently result in the end of APMCs because the state government will have no funds to maintain APMC and if this happens states will have a loss of lot of revenue especially in Punjab and Haryana.

Further, there is a concern that with the implementation of this Bill Middlemen will become jobless; also there is a concern that there is a possibility of middleman cropping up in private sector because our farmers are not in a position to bargain with corporate houses. In private sector there will be no control and thus exploitation by middlemen may multiply. Moreover, with the end of APMCs, MSP will also practically end which is the most important concern.

This bill introduces the concept of 'One nation One market', 'freedom of choice of market' which means that any farmer can sell his farm produce anywhere in the country. This provision looks good on paper but the ground reality is that this already exists and a farmer can sell his produce anywhere in the country, however it does not occur because our farmers do not have medium and money to transport goods from one place to another.

Contract farming is looked upon as privatization of farming, the two major concerns here are that farmers will never be able to carry out with the corporate sector. Act does not prescribe or specify that contract price of the crop should be at least equivalent or above the MSP. It means that the contractor/companies can pay whatever price they wish to the farmer.

Being big private companies, exporters, wholesalers, and processors, they will always have an edge in disputes. Written contract is not compulsory which means that farmer will never be able to prove violation of terms of contract. Farmers have a valid point because they have seen privatization in markets of seeds and fertilizers where government believed that the prices will fall because of competition but the results are contrary, and the farmers fear the same in this case also.

Limits of hoarding are removed because the situation of 'Extraordinary price rise' is way too high to reach which simply means that big private players can cause artificial price fluctuation any time because of which not only farmers will be affected but also the consumers will be affected. This is because the main goal or focus of a private company will always be to raise its profits.[9]

Conclusion

Thus it can be concluded that although this bill seems remarkable on paper and a step towards upliftment of farmers but the practical applicability of this bill has many loop holes which needs to be corrected before its effective implementation.

[9] S A Rishikesh, A Critical Analysis of Farms Bill 2020, (16 October 2020), https://www.latestlaws.com/articles/a-critical-analysis-of-the-farm-bills-2020/