

The predicament situation on reform of farm laws VIS-À-VIS dilution of government control vs. farmer's freedom in India

La situación predicante de la reforma de las leyes agrícolas vis-à-vis, dilución del control gubernamental vs. libertad del granjero en la India

DOI: <https://doi.org/10.18041/0124-0102/a.38.9745>

Abstract

The purpose of writing this paper is to give a holistic view of farm law and the viewpoint of the legal provisions unveiling them in contrast to existing laws and issues. The paper is divided into three segments wherein the first segment authors discuss the viewpoints of the requirement of this law and how this law passed. In the second segment, the authors unveil the new farms act and its legal provision for comprehending the structure that the government portrays. In the third segment, the authors focused on the interim order of the apex court wherein the real problem about the question of law is still untouched. The outcome of the paper gives an idea about the new farm law and the issues and also existing issues of the present farm laws.

Keywords: Farm law, Agro-Ordinance, Farmer's right, Supreme Court of India.

Resumen

Este artículo brinda una visión holística de la Ley Agrícola y el punto de vista de las disposiciones legales que las revelan en contraste con las leyes y temas existentes. Está dividido en tres segmentos: en el primero se discuten los puntos de vista sobre el requisito de esta ley y cómo fue su aprobación. En el segundo segmento se desvela la Ley de las Nuevas Granjas y su disposición legal para comprender la estructura que retrata el gobierno. Por último, se analiza la orden provisional de la Corte Suprema en la que el problema real sobre la cuestión de la ley aún no se ha estudiado. Como conclusión se da una idea sobre las nuevas leyes agrícolas y los problemas que enfrentan.

Palabras claves: Derecho agrícola, ordenanza agrícola, derecho del agricultor, Tribunal Supremo de la India.

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Cómo citar:

Kshemendra, M. T., & Arpit, S. (2022). the predicament situation on reform of farm laws VIS-À-VIS dilution of government control vs. farmer's freedom in India. *Advocatus*, 19(38), 41-47. DOI: <https://doi.org/10.18041/0124-0102/a.38.9745>



Open Access

Recibido:

16 de julio de 2021

Aceptado:

16 de noviembre de 2021

None to praise, very few to love it
Wordsworth's Lucy-

INTRODUCTION

In the present era where the country is fighting against the Covid19 an ordinance promulgated by the President of India i.e. The Farmers' Produce Trade and Commerce (Promotion & Facilitation) Ordinance 2020 and the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance 2020. The question arises whether there is a need for an hour for this ordinance and the power under art. 123 exercised by President, justified under this circumstance (Joyita, 2013). The other part of this research pressed upon the procedure which creates controversy being passed in Rajya Sabha (Upper House) by voice vote where it was expected to have a greater debate in the house by the member of opposition being ignored by the speaker. In this presentation of Covid19 where the world is fighting against the situation on the other hand the farmer protesting at the border of Delhi to roll back these laws. This paper used doctrinal research with an analytical view on the existing condition of Farm Laws in India and the need for an hour for further reform based on the ordinance being passed.

Need of an Hour of agricultural reform in 'Agri-Ordinance' vis-à-vis Justifiability of Ordinance making Power

The objective of Agri-ordinance rests upon three major points: firstly, this ordinance

will 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. Secondly, it promotes corporate farming which helps the farmer to connect with agri-business firms fairly and transparently, and thirdly the ordinance also promulgates to amend the Essential Commodity Act (Dev., 2021). and take out the commodity like pulses, oil-seeds, cereals, etc., and will allow clamping of stock limits on agricultural commodities only under "very exceptional circumstances".

The question arises concerning ordinance and justifiability of promulgation of the ordinance where the points to be highlighted are: firstly, the law-making power under Indian Constitution bestowed with parliament under Article 107 and Parliamentary process takes time to complete all the step. The urgent requirement where parliament is not in session or sometimes to meet an urgent situation in the country. The exercise of this power was not intended to be mala-fide to bypass the elected representative of the people to discuss as well as debate on the bill in an open forum or to serve political motives. The other part of the discussion is whether the situation warranted any type of ordinance on the subject matter as well as whether the court has the power to review the requirement of promulgating an ordinance. The deletion of the clause mentioned that the president's satisfaction shall be final and conclusive and shall not be ques-

tioned in any court. In the present pandemic situation, the requirement of these Farm Acts is not the subject matter of extraordinary circumstances because the protest against these laws creates a ruckus situation that moulds the whole situation for political gain.

The procedure of Farm bill passed in Lok Sabha & Rajya Sabha vis-à-vis Lacuna in the process

The bill was introduced in Lok Sabha on 14th September 2020 to replace the ordinance promulgated on 5th June 2020 and the bill was passed on 17th September 2020 by voice voting. The bill was passed in Rajya Sabha on 20th September 2020 through a voice vote where the leader of the opposition raised a question that the bill rammed without division of vote. The objective of the upper house and the Rule of procedure of Rajya Sabha were not followed properly and the bill passed without any appropriate debate and discussion. It was expected when the bill was introduced in Rajya Sabha some of the members of the opposition disapproved; some of the members demanded to send it to a select committee or Parliamentary Standing Committee whereas this bill required deep and extensive debate by states or to properly scrutinize the merits and demerits while considering the significance of stakeholders. The deputy Chairman ignore the objections, suggestions, and recommendations passed the motion through voice vote which is majorly for use small issue where much discussion and debate is not required.

The procedure of voice vote where the Chairman puts the question on the motion and invites those who are in favor of the motion to say “Aye” and those against the motion to say “No”. All the ‘ayes’ and ‘nos’ are shouted at the same time and it is only the decibels of either ‘aye’ or ‘no’ which decide whether the motion is adopted or dropped. The Chairman says “I think the Ayes (or the Noes, as the case may be) have it”. If the opinion of the Chairman as to the decision of a question is not challenged, he shall say twice: “The Ayes (or the Noes, as the case may be) have it”. There is no head or vote counting and the Chairman relies only on his ability to hear and exercises only his discretion to decide the motion. This method is highly inaccurate and undemocratic as it does not ensure the participation of each member present in the house. This method is reserved only for petty matters.

The member of opposition object to voice vote rules and accordingly the deputy chairman required to order for ‘Division’ as per Rule 254(2) of Rules of Procedure and Conduct of Business in the Council of States and thereafter it was done through automatic vote recorder as prescribed in Rule 253. The deputy chairman, unfortunately, passed the bill merely on voice vote ignoring the procedure laid down under the Rules of Procedure and Conduct of Business in the Council of States.

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

The objective of creating this bill was largely to break the cartelization of APMC where the new entry is very difficult and which restrict the trade of farmer to go beyond the boundaries. The Act majorly focussed on the system where the farmers directly connect with the seller without any deemed notified market which breaks the monopoly of these markets, the outcome of this market may give more freedom to choose their agricultural production in the market (Shankar, 2021). The activities provide a mechanism of an alternative trading-based channel outside the existing APMC for a smooth transaction to provide efficient, transparent, and barrier-free inter-state and intrastate transactions outside the notified physical premises.

Significance provision of the FPTC Act

The act made certain dynamic provisions regarding inculcation the digital market transactions, freedom to conduct trade and commerce in trade areas, and dispute resolutions mechanism for the farmer. The important definitions under this act are electronic trading and transaction platform which means a portal is set up for direct and online buying where the resultant of the transaction is the physical delivery of the farmer's produce. The definition of the farmer means an individual doing work by self or hiring someone as labor for the cultivation and production as well

as it includes the organization of the farmer producer. The two most significant definitions are inter-state trade and intra-state trade whereas the inter-state trade means that the trader from one of the states may buy the farmer's production or the trader may transport to another state in which the trader purchased the farmer's produce or where it is originated. The definition of intra-state trade means the act of buying and selling the farmer's produce wherein the farmer producer or trader should be in the same state.

The mechanism under FPTC Act

The act is one of the chapters that discuss the promotion and facilitation of trade and commerce for the farmers who are producing. The act gives freedom to conduct trade and commerce in the trade area and also makes PAN number mandatory for the transaction except for the farmer-producing organization and agricultural cooperative society. Every trader shall make the payment to the trading schedule on the same day to the farmer or a maximum of three working days if procedurally required for that transaction. The act also clarified that there is no market fee levy on traders and farmer's producers in the prescribed trade and commerce specifically in the traded area.

The act contains a separate chapter for resolving the disputed area by making an application to the sub-divisional magistrate to resolve the dispute through the process of conciliation. The SDM shall refer the dis-

pute to the board of conciliators where the parties may make the representation within seven days. The most significant part of the act is controversial regarding the overriding effect of this act and the exclusive power of the central government to make the rules for carrying out various provisions.

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

The objective of this act gives equal footing importance to the producer and the buyer so that the farmer may get the remunerative price fairly and transparently. The act provides a national framework agreement on framing which provides protection and also empowers the farmer to engage in agricultural business firms, processor whole-seller, and so on where mutual agreement is an important factor (Ponnusamy, K., 2013). The whole mechanism is transparent and fair where the legislature intends to create a market where farmer producers may sell the product based upon the agreed remunerative payment (Neilsno, J., & Pritchard, B., 2010).

Significance of legal provision of the FAPAPS Act

The act provides autonomy for the transaction by reducing the intervening authority and the concept of farming agreement gives freedom to a farmer and the buyer where the agreement contains the pre-determined quality to which both the producer and buyer agreed

(Birthal, P. S., Joshi, P. K., & Gulati, A., 2005).

The mechanism of the farming agreement is separately explained in Chapter II where it is specifically mentioned that the producer and the buyer exclusively stated the time of supply, quality of production, and terms regarding farm-related services. The minimum time frame for this agreement as per the legislature ranges from a minimum of one crop season to a maximum period of five years (Piccinni, G., Ko, J., Marek, T., & Howell, T., 2009).

The act also made the parties to this agreement mutually acceptable the compliances concerning the quality grade and the standards of farming produce things. The parties may adopt practices for production which are suitable as per the climate, agronomics, and various other factors. The focus point for the pricing of farming produce and the legislature demarcates if there is an additional amount above the guaranteed price then the such price needs to link with the prevailing price which is specified under APMC. Agreement farming is not a new concept in India there are lot experiment happens with contract framing and the literature suggest the contract farming in India has not the successful experimented maybe because of the lack of legislative framework.

Prospective Amendment in Essential Commodity (Amendment) Act, 2020

The amendment made to the Essential Commodity Act, 2020 where the product which is in essential commodity removed from the

list of essential commodities. The list specifically regulates and controls the supply as well as production and distribution of these list of commodities and disallows the sudden fluctuation in price due to illegally hoarding them in large quantities and on the other side under-selling of the existing ones. The protest of the farmer against the farm laws due to the removal of MSP (minimum support price) wherein the private buyer may directly contact the farmer which resulted in a direct contract. The process of removal of MSP from 23 crop productions will create a lot many problems and dilute the hold on it as well (Sahoo, et al, 2020).

Reflection of Supreme Court on Farm Bills

The present matter regarding the farm's bill was presented before the Hon'ble Supreme Court of India (Rakesh Vaishnav vs Union of India No(s).1118/2020) where the Apex court prima facie held the bill for the time being. The Constitutional Court instead of an interpretation of the law, the apex court switches the mode for the time being delay. The court has passed the interim order that the farm laws will be staying and the grievance committee is being formed to resolve the dispute through mediation. The farmer welcomes the decision regarding the proceeding of stay whereas the denied the process of mediation. The holding of laws set out the precedent by the apex court which creates a vicious situation where there is no clarity for the applicability of the farm law. The approach of this matter relies upon the decision of the court whether the question

of law concerning the passing of this law is as per the procedure laid down in the law.

CONCLUSION

The reform in the farm laws at the outset of the legislature intended where more freedom regarding the choice-based agreement and the farmer has the right under this new reform to sell the production even across the state boundary. The new reform removes the fee (mandi fee) which is levied on them this added lot much freedom to opt for contract farming (Sekhar, C. S. C., 2021). The involvement of private players in it makes farming more technological where the farmer may earn more profit because there is no fee applicable to the new law. Individual farmers will be at risk under the Contract Farming Act and might not receive a fair bargain in comparison to the major commercial operators. Therefore, the government needs to support only farming cooperatives rather than individual farmers. The APMCs provide insurance to small ranchers because it is a controlled environment, there are authorized brokers, and there is someone the farmer can complain to in case of an issue. However, generally speaking, APMCs have evolved into a niche of imposing business models and defilement and the agents or the dealers. The question concerning the protest regarding these laws is due to the integration of so many like dilution of control and regulation by APMC which cannot be a true result. Even these predictions of laws cannot be imagined because the role of every unit/authority is much more important wherein the aware-

ness of the farmer is also an important aspect because no one is there in between them.

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