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Policy Brief

Critical Analysis of Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, Farmers (Empowerment and Protection) Agreement on Price Assurance, Farm Services Act 2020, Essential Commodities (Amendment) Act, 2020.

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This policy brief published by The Symposium Society, Hindu College aims to summarise the changes brought in under the the three recent agriculture laws passed by the Indian Parliament in September and will analyse the implications that these would have on the agricultural economy and farmers. The brief also goes on to provide recommendations which could help mitigate the stakeholders' concerns.

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About the Issuing Body:

The Symposium Society is the policy & deliberation forum of Hindu College, University of Delhi. The society conducts a myriad of activities to promote deliberation, public policy analysis and research in the university space.

Executive Summary:

This document analyses the changes brought in under the the three recent agriculture laws passed by the Indian Parliament in September, namely- Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; which allows farmers to sell their harvest outside the notified APMC *mandis* without paying any state tax or fees, Farmers (Empowerment and Protection) Agreement on Price Assurance, Farm Services Act 2020; facilitating contract farming and direct marketing, and the Essential Commodities (Amendment) Act, 2020; which deregulates the production, storage, movement and sale of several major foodstuffs, including cereals, pulses, edible oils, and onion, except in the case of extraordinary circumstances. On 5 June 2020, the government of India promulgated three ordinances and by September 14, 2020, they were brought to Parliament as legislative bills. On 27 September, the bills received Presidential assent and were notified in the gazette. The government hopes the new laws will provide farmers with more choice, with competition leading to better prices, as well as ushering in a surge of private investment in agricultural marketing, processing, and infrastructure. This policy brief will summarize each law and analyze various aspects of these laws like contract farming, stock restrictions, and its impact on the income of farmers and state governments. And also provides recommendations to improve its functionality.

Introduction:

The challenge of having a self sustainable agricultural sector has not been solved anywhere in the world. While agriculture remains a smaller contributor to economic growth, food security itself is invaluable. Agriculture with its allied sectors, is the largest source of livelihoods in India. 70 percent of its rural households still depend primarily on agriculture for their livelihood, with 82 percent of farmers being small and marginal. A self sustaining agricultural sector will be a force multiplier in India. To make it so, we need to bring agriculture to the 21st century and we must be innovative and open to experiments.

Farmer's Produce Trade and Commerce (Promotion and Facilitation) Act, 2020:

The aim of the act is that it will create an ecosystem where the farmers and traders will enjoy freedom of choice of sale and purchase of agri-produce.

It will promote barrier-free inter-state and intra-state trade outside the premises of markets notified under State Agricultural Produce Marketing legislations. Such trade can be conducted in an 'outside trade area', i.e., any place of production, collection and aggregation of farmers' produce.

The act prohibits state government 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'. The farmers will not bear any transportation costs.

The act also seeks to produce electronic trading in the transaction platform to ensure trade across electronically. The following entities may establish and operate such platforms:(i) companies, partnerships firms, or registered societies, having permanent account number under Income Tax Act, 1961 or any other document notified by central government, and (ii) a farmer producer organisation or agricultural cooperative society.

The act states that every trader who transacts with farmers shall make payment for the traded scheduled farmers' produce on the same day or within the maximum three working days if procedurallyso required subject to the condition that the receipt of delivery mentioning the due payment amount shall be given to the farmer on the same day.

With this act farmers will be able to engage in direct marketing thereby eliminating intermediaries resulting in full realization of price.

Furthermore, It will allow farmers to do trading at farm gates, warehouses, cold storages, processing units etcetera.

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

The act aims to promote contract farming by providing a national framework on farming agreements between a farmer and a buyer prior to the production or rearing of any farming produce of a predetermined quality.

These agreements shall provide for mutually agreed terms and conditions for supply of such farm produce including the time of supply, quality, grade, standard, price and other terms related to farm services like supply of seed,feed, fodder, agro-chemicals, machine and technology and other inputs for farming.

The minimum period of this agreement shall be for one crop season or one production cycle of livestock and the maximum period shall be five years.

The price of the produce shall be determined and mentioned in the farming agreement and for products subject to variations, a guaranteed price, explicitly provided in the agreement, shall be paid to the farmer. In short, the method of determining the price of the produce or the guaranteed price or any additional amount including bonus or premium shall be specified in the farming agreement.

The particular farm produce mentioned in the agreement is exempted from the application of any State Act established to regulate the sale and purchase of such farming produce and also the sponsor is exempted from any stock limit obligation under the Essential Commodities Act, 1955 or any such other law.

This act prioritizes the farmers by prohibiting sponsors from acquiring ownership rights or making permanent modifications on their land or premise.

The role and services of any third person or intermediary [like aggregators] shall be explicitly mentioned in the agreement. Also, the state government shall constitute a Registration Authority for electronic registration of farming agreements.

The act also provides for a three-level dispute settlement mechanism: the Conciliation Board, Sub-Divisional Magistrate and Appellate Authority. The farming agreement shall explicitly mention about the Conciliation Board with representatives from both the sides. In case of any unresolved dispute after 30 days within the board, the parties can approach a Sub-divisional Magistrate for resolution. And they can move to an Appellate Authority in case of any unsatisfactory Magistrate order. The time period for each of these redressal processes is 30 days. Both the Magistrate and the Appellate Authority can order for recovery of the due amount with penalty and interest but no such recovery action can be initiated against the farmer's land.

The Essential Commodities (Amendment) Act,2020:

Aim of this act is to amend the Essential Commodities Act, 1955. The Essential Commodities Act, 1955 empowers the central government to designate certain commodities such as food items, fertilizers, and petroleum products as essential commodities. At a time when India was emerging from the aftermath of partition and shortages, the objective of this act was to protect citizens from exploitation from unscrupulous traders. The central Government may regulate or prohibit the production, supply, distribution, trade and commerce of such commodities.

The twin attributes of the amendment to the act are; Deregulation of foodstuffs and Removal of stock limit action. As per the new amendment act, the supply of foodstuffs, including cereals, pulses, potato, onions, edible oilseeds and oils, may be regulated only under extraordinary circumstances which may include war, famine, extraordinary price rise and natural calamity of grave danger. The excessive regulatory regime proved detrimental for the growth of agriculture sector. The main object is to ensure 'equitable distribution' of foodstuffs and their 'availability at fair prices' in exceptional situations. Any action on imposing stock limits shall be based on price rise and an order for regulating stock limit of any agricultural product may be issued only if there is a 100% increase in the retail price of horticultural produce or a 50% increase in the retail price of non-perishable agricultural foodstuffs.

However, the installed capacity of a value chain participant and the export demand of an exporter will remain exempted from such stock limit imposition so as to ensure that investments in agriculture are not discouraged.

Essential Commodities Amendment Act, 2020 aims to remove fears of private investors of excessive regulatory interference in their business operations. Government claims that the freedom to produce, hold, move, distribute and supply will lead to harnessing of economies of scale and attract FDI into the agricultural sector.

Governments had restrictions on hoarding on food commodities and could seize any excess stocks maintained by the traders. Now with the new Bill, such regulation is diluted. Besides farmers and farmer collectives, agribusinesses and traders can manage post-harvest facilities without such interference by the government. The key changes seek to free agricultural markets from the limitations designed originally for an era of scarcity and goes a step ahead to create an environment based for ease of doing business by eliminating and eradicating the outlived statutory 'checks and controls'.

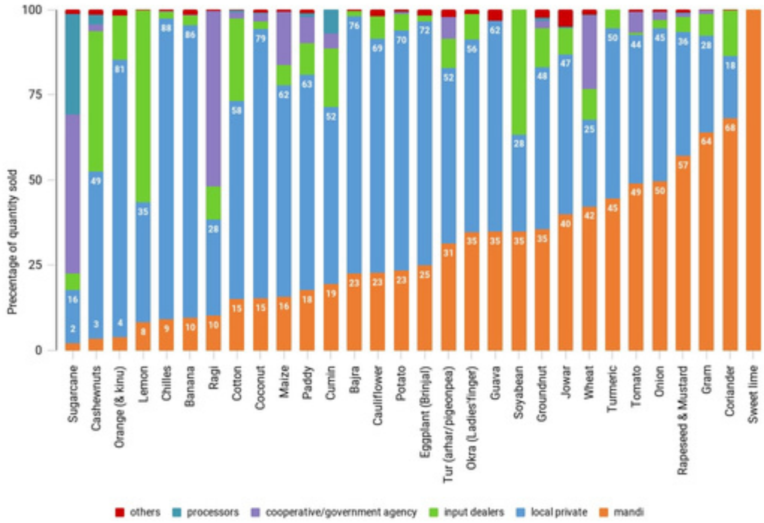
Why have the changes been made now? The 1955 Act was legislated at a time when the country was facing a scarcity of foodstuffs. But now the situation has changed. India has become an importer of several foodstuffs. Production of pulses has increased by 2.5 times, from 10 million tonnes to 25 million tonnes and production of wheat has increased by 10 times and rice has increased more than four times.With these develo-pments, the Essential Comm-odities Act 1955, has become anachronistic.

Major Weaknesses:

Prime Minister Modi described the passing of these three Agricultural bills as 'Watershed moment for Indian Agriculture'. However, not all farmers see it as a progressive step. Farmers from various states are organizing widespread protests against the three bills. There are major lacunae in the bills as propounded by many farmers, making outcomes uncertain.

As of today, private players where they operate, tend to look to APMC markets to guide their own transaction prices outside the mandis. In the absence of APMCs the new trade areas could splinter to bargaining islands, leaving price settling to relative bargaining power of the farmers vis-a-vis the buyer. The outcomes of such a system looks disturbing.

In 2006, Bihar amended its APMC Act with the objective to attract private investment in the sector and gave charge of the markets to the concerned sub-divisional officers in that area. It resulted in a lack of required marketing infrastructure as the existing infrastructure lost its influence. Because, in unregulated markets, farmers faced issues such as high transaction charges and lack of information on prices and arrival of prices.



Percentage distribution of quantity sold by agency for selected crops. July-December 2012 (NSS, 70th Round)

Many commentators misled the public that so far the farmers had no choice but to sell their produce to rapacious middlemen operating in APMC mandis. However, this is far from the truth(Figure 1). Nationally representative data of agricultural households suggest that only 25% of all transactions in India during 2012-13 passed through these mandis, whereas 55.9% were sold to private traders.

These new farm bills may have faced lesser farmer opposition had it included a provision safeguarding the continuance of the existing Minimum Support Price[MSP]. Agriculture Minister Narendra Singh Tomar has said that "MSP was not part of any law before. Nor is it part of any law today." While the Government does declare MSP twice a year, there is no law making MSP mandatory. The government, though it buys at MSP from farmers, is not obliged by law to do so.The Commission for Agricultural Costs and Prices (CACP) had asked the earlier recommended legislation to iron out a concrete MSP law for farmers, but was not accepted by the Centre. A legislation to make MSP mandatory would help to instil confidence among farmers for procurement of their produce. The ongoing farmer protests reflect a loss of that very confidence.

The absence of the provision of MSP in the three bills made the farmers rightly suspect or fear that the new market regime would end the system of MSP. Also this is a major sustenance issue for states like Punjab and Haryana and for the rest of the states it has reduced effects. The 2015 Shanta Kumar committee report had used NSSO data to point out that only 5.8% of Indian farmers actually sell at MSP. The solution to this problem is not to end the system altogether, but to make it more systematic and accessible to more farmers because in the age of globalization of agriculture, our farmers needed at least an assured price or else in many instances they may incur great loss. Therefore, MSP mechanism shields farmers to an extent, from such risks, by guaranteeing a floor price for their produce. Even though the Prime Minister Narendra Modi tweeted on September 20 that the "system of MSP will remain" and "government procurement will continue", a mere addition of this provision would have created less apprehensions among the farmers about the bills and also would have made it more farmer-friendly.

Another greater problem with these three bills is that they lack a transparent recording of transactions and a credible regulatory architecture. These three bills tend to invisible trade area transactions, contact farming and stocking in a way that makes them impossible to regulate.

There is also complete absence of regulation and regulatory oversight for both new trade areas and new electronic trading platforms that might emerge.

Stakeholders' Reaction:

On 14 Sept 2020, amidst growing concern over the seismic collapse of the economy, the Govt of India introduced three legislative bills in parliament for discussion and approval. The proceedings in parliament have been vastly inadequate in addressing the potential ramifications of the bill. Nor did the Govt use the parliamentary discussion as an opportunity to clarify its larger vision for Indian agriculture that these bills foregrounded. Clearly, there are problems with the fundamental premises of approach, being less federalist in introducing these bills as cited by many stakeholders. "Agriculture", "markets and fairs", "trade and commerce within the states" are all state subjects in the Constitution (Entry 14, 26, 28, List II, Seventh Schedule). Agricultural markets have therefore been the responsibility of states. Moreover, the Centre has an overarching responsibility via Article 301 to ensure that there is free trade within the country for ensuring "freedom of trade, commerce and intercourse". To counter these three Union laws, many state governments with their constitutional discretion enacted their own state agricultural bills.

1. Punjab became the first state in the country to formally reject the Central government's three agricultural sector legislations, with its legislative assembly unanimously passing three bills to negate Union's laws. The assembly passed a resolution rejecting the Centre's legislations and demanded their complete annulment. It also sought an ordinance to protect the MSP and ensure continuance of procurement by the centre.
2. Similarly, the Rajasthan government introduced three bills in the Assembly to negate the impact of farm laws enacted by the Centre. Rajasthan's Parliamentary Affair Minister Shanti Dhariwal introduced the Essential Essential Commodities (Special Provisions and Rajasthan Amendment) Bill 2020, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Rajasthan Amendment) Bill 2020 and the Farmers Produce Trade and Commerce (Promotion and Facilitation and Rajasthan Amendment) Bill 2020.
3. Shiromani Akali Dal(SAD) leader and Union food processing industries minister Harsimrat Kaur Badal has quit the Narendra Modi government in protest against the farm bills passed in parliament. "I have resigned from the Union cabinet in protest against anti farmer ordinances and legislation. Proud to stand with farmers as their daughters and sisters", she said on her resignation.
4. Various Farmers organizations and associations are protesting these farm bills. RSS affiliate Bhartiya Kisan Sangh said that legislation in the current form is not acceptable. "If MSP cannot be included in this bill, then bring another law" said BKS General Secretary Dinesh Kulkarni.

Recommendations:

1. Efficient Marketing Platforms: Availability of a transparent, easily accessible, and efficient marketing platform is a prerequisite to ensure remunerative prices for farmers. Most farmers lack access to government procurement facilities and APMC markets.
2. Gramin Haats: The Standing Committee in 2018-19 noted that Gramin Haats (small rural markets) can emerge as a viable alternative for agricultural marketing if they are provided with adequate infrastructure facilities. It recommended that the Gramin Agricultural Markets scheme (which aims to improve infrastructure and civic facilities in 22,000 Gramin Haats across the country) should be made a fully funded central scheme and scaled to ensure presence of a Haat in each panchayat of the country.
3. Inclusion of MSP: Even though the Farmers Agreement act provides for a guaranteed price, there is no clear specification about the Minimum Support Price [MSP]. Given this, it is recommended to have a clear specification of MSP as the guaranteed price in the act which would ease farmer's tensions and give them relief.
4. Improving farmers awareness: Also, in contract farming arrangements the farmers would be more vulnerable in terms of their negotiation abilities. There are high chances of farmers being exploited due to their illiteracy or technological unawareness. Also the redressal mechanism can be highly cumbersome for the farmers. Therefore there should be a comprehensive mechanism by the government to make the farmers familiar with these procedures and technicalities.
5. Need of primary regulations: Complete deregulation in terms of sale of purchase of farm produce and also in stock limits can lead to exploitation of farmers as well as hoarding. Therefore, the government shall take the disadvantageous position of farmers in contract farming, into notice and introduce essential, if not stringent regulations.
6. Prevention of hoarding: Traders argue that the amendment to the act will allow big businessmen to hoard essential commodities such as cereals, pulses,edible oil potato and onion leading to rise in prices.Necessary steps should be taken by the central government to check artificial price rise, black marketing and hoarding of such items of daily use even though they are not included in the essential commodities.
7. Need of public storage facilities: The amendment act may result in corporations dominating the agri business.Farmers may earn less and consumers may pay more due to private hoarding. Government should build large storages and processing capacities to prevent corporate takeover.
8. Lower price triggers: According to the law, the government can intervene only if there is 50% price over previous year's price in cash of non-perishable goods and 100% price rise over previous year's perishable goods. According to the critiques, this price trigger seems a bit unrealistic and is so high that they are likely to never be triggered. It is recommended that the trigger price limits be lowered so that the government can intervene and control the price rise very soon.

Conclusion:

In this policy brief, we have analysed the three new agricultural bills enacted by the central government in September. The provisions of the bills look progressive on paper but at the same time have certain flaws. So we have tried to put forward certain recommendations to improve its effectiveness. Indian farmers were completely under the control of the government since independence since it was initially inevitable for the survival of a newly independent nation with a 361 million population to feed. But later on, these unnecessary regulations prevented the growth of the agriculture sector in India. Even with the Green Revolution on one side, the marginalised farmers continued to be marginalised in our country. Therefore, the agricultural sector needed an all rou-nd improvement through new legislation. But the apprehensions among the farmers regarding MSP as well as the possibility of privatisation of agriculture cannot be avoided completely. The most important challenge with these bills would be its nationwide implementation, particularly when certain states ha-ve already moved against these bills.

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