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FARM REFORMS ACTS 2020 - THE WAY AHEAD

The Farmers Agitation in India began in protest against three Farm Reform Acts enacted by the Parliament of India on 20 Sep 2020. The matter has been in the public domain, and all of us are aware of the issues concerned. A summary is available for those who wish to recollect the essentials at https://www.wikiwand.com/en/2020%E2%80%932021_Indian_farmers%27_protest, and in more detail in the media.

On 12 Jan 2021, the Supreme Court of India, in a bid at reconciliation between the Government and the agitating farmers, set up a committee to look into the matter. This committee had called for inputs for their consideration. Reproduced below is a document submitted to this Committee outlining a course of action.

Genuine, actionable views and suggestions on the contents of the document and additional ideas are welcome. They will be further submitted to the Central Government duly compiled.

-----The Document -----

**TO THE
SUPREME COURT APPOINTED COMMITTEE
OF EXPERTS ON FARM LAWS**

**COMMENTS VIEWS AND SUGGESTIONS ON THE THREE FARM REFORM
ACTS 2020**

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PART 1 - INTRODUCTION

General

1. These comments are in response to the Public Notice from the Committee on Farm Laws published by DAVP in Jan 2021. They are exclusively on the said three farm laws in question and from a purely logical point of view. It does not take into account any political parties', farmers', sponsors' or other interested parties' points of view.
2. It includes major ideas that need to be incorporated when introducing changes to the new laws and revising them in a wider and holistic manner. Also included are a few suggestions that are not new in any way nor something that no one knows, intended for the government so that progressive laws when introduced help transition from the old order to the new, smoothly, seamlessly and without the invariable bumps. The committee may include this in their report.

The Three Farm Laws

3. The three Farm Laws under consideration and in question are: -
 - (a) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 No. 20 Of 2020 [24th September 2020.]
 - (b) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 No. 21 Of 2020 [24th September 2020.]
 - (c) The Essential Commodities (Amendment) Act, 2020 No. 22 Of 2020 [26th September 2020.]
4. Fundamentally the three Acts intend to bring about a positive change in the way that Agricultural marketing is carried out in the country. That such a change was long overdue and necessary to change the paradigms of agriculture in the country is a no-brainer. However, major changes are made it must be done in a deliberate and holistic manner involving all stakeholders. Discussion must be preceded by a 'White Paper' and deliberated ad nauseam.
5. The current approach in making the laws has not been holistic, in that they cover only one aspect of the agriculture quagmire. Even taking the laws in isolation, they do

not specify their purpose at any length, nor are they linked to articles of the Constitution of India (CoI) which should have been mandatory especially since agriculture is a State subject.

6. Thus, once again the rumble is on the manner of execution rather than the intent.

PART 2 - MAJOR OBSERVATIONS

The Law-Making Process

7. An Act flows from the Constitution and the Rules from the Act and the Regulations from the Rules and routine orders from the Regulations. Thus, the succeeding one must link to an Article, Section, Clause or Rule of the preceding.

8. The Farm Laws do not specify as to under which Article of the Constitution these laws have been enacted. This is mandatory as agriculture is a State subject and it is only by invoking Article 249 of the CoI that the Centre can enact laws on matters in the State List.

9. Also, the Act should be kept simple and details of the operation of the Act should be in the Rules rather than the Act itself.

10. The presentation of a product is as important as the product itself. It is only then that it will appeal to those at whom it is targeted.

Purpose of the Acts

11. The purpose of introducing the three Acts and what is intended to be achieved by them has not been spelt out in any detail as a preamble to the Acts, nor was it discussed in any detail in the public domain before the passing of the related ordinance.

12. **White Paper.** A white paper explaining the intent and purpose of the Ordinances should have been circulated for discussion before they were passed.

Centre and State List in the CoI

13. Agriculture is listed under the State List in the CoI. Agricultural Marketing is therefore a State subject. Thus, what prompted the Central Government to undertake legislation on this aspect and under which Article of the CoI it has been done, should be mentioned in the preamble to the Acts.

14. The SC also needs to opine on the Constitutional validity of these Acts as to the best of my knowledge it is only under Article 249 of the CoI, that the Parliament can legislate on a State Subject.

15. **Central Umbrella Law and State Acts.** Notwithstanding this, it is time for opening up agriculture to a more open mechanism, which will be beneficial firstly to the country and also the farmer. The Parliament must therefore legislate a Central Umbrella Law under Article 249 of the CoI and leave the detailed Act to the States.

APMC Acts and Model APML Act 2017

16. There is a link between the three Farm Laws and the APMC Acts/Model APML Act 2017. This link and how the APMC Act will operate post the three Farm Laws has not been explained in detail in the Farm Laws. This aspect has to be included in the preamble to these Acts.

17. The fact that the APMC Act and the MSP are still in operation and is available to those who wish to use it even after the three Farm Laws are passed, is an aspect that is not very well explained leaving it ambiguous.

18. The diverse options to sell his produce and that he can choose to sell his produce at an APMC Mandi or to another buyer subject to MSP or to fall back on the APMC Mandi in case of failed Farmer Agreement are aspects that are not clear in the laws.

PART 3 - MAJOR SUGGESTIONS

Central Umbrella Act and State/UT Farm Laws

19. **Central Co-ordination.** Food production is the most major aspect of human survival there is a mandatory need for a high degree of coordination and standardisation of agriculture-related processes across the country. To ensure this the Centre must have an Umbrella Act covering all aspects of agriculture. This new law must cover the concepts and larger issues and lay down the options available to the States for Agriculture and Livestock Marketing.

20. **Umbrella Law.** From the CoI, agriculture is a State Subject. Yet, in the National interest, the centre can make laws that lay down the larger concept on which Agriculture will be managed in the country. This law will no doubt have to be passed after invoking Article 249 of the CoI.

21. **Options Available to the Farmer.** The primary aspect of the Umbrella Law must lay down among other things are the options available to the producer. Three possible options are listed below; there could be more as envisaged by the Legislature: -

- (a) To sell his produce at an APMC Mandi.
- (b) To sell his produce to any person or establishment as desired by him outside the APMC Mandi, to be decided before, during or after the production stage.

(c) To enter into a Farming Agreement with a Sponsor or Collaborator as envisaged in Act 21 of 2020.

(d) Any other option envisaged by the Legislature.

22. **State List.** Agriculture is in the State List and therefore Agricultural Marketing is a State matter. The conditions prevailing in each state and region are different in aspects of crop type, climate, seasons, irrigation, electricity, farming methods, production costs, transportation, communication, govt support etc. Thus, the nuances of agriculture and its marketing vary significantly from state to state and thus one Central law cannot cover the situations in each state. It is therefore best that detailed laws on the execution of the concepts laid down in the Central Umbrella Law are left to each State/UT.

23. **Model Law for the State/UT Laws.** A model law covering the various aspects must be included in the Umbrella Act, to be adapted and enacted by the States and UTs within a time frame. It can contain certain mandatory aspects. Thus, the State Law containing the options available to the farmer as spelt out in Para 21 ante would standardise agricultural practices that will enable seamless trade in agricultural products across India. It will also ensure that there are not too many laws and that one law does not conflict with another.

Circulation of Draft Laws Feedback and Discussions

24. **Draft Umbrella Act and Model State Laws.** The Centre must prepare these two laws in draft form and circulate them for feedback. Once the feedback is received the draft laws must be revised and circulated again and feedback obtained again. The second draft must also include reasons why a suggestion not agreed to cannot be included.

25. **Needs of Stake Holders.** This process will ensure that the needs of the stakeholders are met and there is no scope for disagreement after the laws are enacted.

26. **The necessity of this Process.** Such processes are especially mandatory before legislation for aspects that have a major impact on the social and economic fabric of the country. It will ensure that the socialist nature of our Constitution is maintained, and people feel as being a part of the governing process, identify with the Government and support it.

PART 4 - OTHER IMPORTANT ASPECTS

Infirmities in the Drafting of the Laws

27. **Legalese.** The Acts in question are drafted in complicated legalese with convoluted text, double negatives, etc. The Acts should be in simple language and direct, which

leaves little scope for varying interpretations that will no doubt lead to endless litigation and hundreds of cases in courts adding further avoidable chaos in society and load on the bureaucracy and the judicial system.

28. Reference of the Constitution of India. The Acts in question must have reference to the relevant Article of the Constitution under which it is enacted. This will avoid unnecessary ambiguity on the Constitutional validity of the law, establish its legitimacy, avoid needless litigation and discontent with legislative processes.

29. Act, Rules, Regulations and Orders. Each of these follow the preceding item. So also, the contents of each must flow from the preceding. The Acts in question contain aspects that should have gone into the Rules, making it verbose, complicated, and undecipherable to the layperson. The Acts should be kept direct, simple and unambiguous. Each clause of the Act must have its corresponding Rule and similarly for Regulations and Orders as well. They must all be circulated for discussion before enactment.

30. Use of the word ‘may.’ Laws are expected to be unambiguous. In many sections of the laws, the word ‘may’ is used. And ‘may’ also means ‘may not’ to a degree. Laws are binding, if a choice is being given to do or not to do a thing, it ceases to be a law. The clauses where these occur must be re-conceived and reworded.

31. Grouping of the Subject Matter and Rational Flow. Laws are grouped subject-wise. However, a simple reading does not give an idea of what it intends to do or where it is headed. The clauses must take the law logically from one to the next thus illustrating very graphically what is being done. The current laws fail to do this.

32. Numbering of Laws in Logical Sequence. Act 21 of 2020 by its contents must logically precede Act 20 of 2020. It should therefore have been numbered accordingly.

33. Titles for Each Section. Each Section of the Acts must have a short title saying what the Section is about.

34. Badly Framed Laws. Bad laws are the main cause of limitless cases pending in our civil courts. There should be little scope for interpretation of what is meant in a law. The current laws as enacted will again lead to thousands of more cases that will burden the bureaucracy and judicial system further.

Redrafting of the Laws

35. The Acts when redrafted must consider the aspects mentioned above and rectify the weaknesses caused by poor drafting of the laws. The fundamental approach taken must be revised into a Central Umbrella Act and State Laws as explained at ante is most important.

PART 5 - FEEDBACK ON THE FARMERS’ PRODUCE TRADE AND COMMERCE (PROMOTION AND FACILITATION) ACT, 2020

NO. 21 OF 2020 [24th September 2020.]

General

36. In addition to the preceding points, the following points specifically applicable to this Act are mentioned below.

37. This Act must precede Act 20 of 2020, thus appearing in a logical order.

38. **Title for Each Section.** Each Section of the Act must have a brief title.

Concept of Contract Farming

39. This Act envisages a situation where a sponsor can enter into a farming agreement to supply produce of a certain quality at a certain price. The following are a few of the aspects that need a review in this concept: -

(a) The farmer is expected to supply produce of a certain quality at a certain price in the future. However, it is impossible for the sponsor to predict, despite the best efforts of everyone involved, as to what quality produce can be expected to be produced. The current method is akin to a 'futures contract' in trading and a gamble for the Sponsor unless Rules are laid down on its implementation.

(b) It is impossible to ensure that once the farming agreement is executed, the farmer will endeavour to produce the goods of the desired quality unless there are mechanisms in the contract to ensure that aspect.

(c) Considering both these aspects above, it seems that the price can only be fixed after the produce is examined. So, what is required is the definition of rates for quality and quantum in the Farmers Agreement.

(d) In a case where the sponsor is investing money into the enterprise, the risk then is entirely that of the sponsor. This aspect must be covered in the rules so that the farmer has to keep his end of the bargain.

40. Taking both the possibilities; it seems that in this concept where the prices are fixed in advance and to ensure that the produce is up to the mark, a greater examination of mechanisms involved is required to be studied if not already done and incorporated. The Rules to the Act must cover these aspects.

PepsiCo's Contract Farming

41. At present, companies such as PepsiCo are already doing this very thing in thirteen States of India. Two papers explaining this aspect are attached as Annexures 1 and 2 and give an idea of how PepsiCo is carrying out Contract Farming and the issues involved in contract farming that has to be addressed by legislation.

42. Thus, if PepsiCo is already doing this (even in Punjab), the two primary questions that arise are what are the additional features that the new laws provide and also why are these new laws required. More importantly, do the new laws address the issues that PepsiCo has faced in this new contract farming enterprise.

43. PepsiCo is merely an example, there may be other companies as well. It is important to study the problems faced by them and examine their views as well in addition to that of farmers bodies.

44. These are aspects that need to be investigated.

Quality

45. The procedure for deciding the quality must be simple and must be specified in the Rules and must not involve Government Inspectors.

Payments and Bank Guarantee

46. The Farmer Agreement should be binding on both parties and have built-in safety mechanisms to ensure the operation of the agreement without the need for litigation.

47. **Guaranteed Payments.** The sponsor/buyer should provide bank guarantees and all payments should be effected through a bank, preferably by digital means. This will minimise disputes, avoid litigation and will not add more chaos to society.

48. Necessary rules for this should be framed.

Inspection and Delivery

49. Both these must be a sequential and a continuous process, not separated in time. This will again reduce disputes.

50. Rules for this also needs formulation.

Dispute Resolution

51. Dispute resolution is with the bureaucracy in the Farm Laws in question. However, at one stage it must go to the judiciary. A simple and accessible judicial process must be specified, without creating new establishments. This will provide a legal recourse, which is mandatory and cannot be done away with as seems to be conceived in the present law. This aspect is not truly clear.

52. **Good Faith (Section 13).** What good faith is, is defined in the IPC, however, it is not defined here. Whether a matter was done in good faith or not, is often disputable, the final decision on this aspect must be with the judiciary. Necessary changes need to be incorporated for this aspect.

MSP GST Income Tax

53. These aspects are covered later.

PART 6 - FEEDBACK ON THE FARMERS (EMPOWERMENT AND PROTECTION) AGREEMENT ON PRICE ASSURANCE AND FARM SERVICES ACT, 2020 NO. 20 OF 2020 [24th September 2020.]

General

54. All aspects covered in the preceding part apply to this Act as well and are not repeated here.

55. However, aspects that can go into the Rules should be not included in this Act but incorporated in the Rules. This will keep the Act itself simple and conceptual.

Contents of the Farming Agreement

56. All aspects to be included in the Farming Agreement should be listed under one part. And a model Farming Agreement with all practical options must be included either in the Rules or the Regulations.

Parties to a Farming Agreement

57. All parties to a farming agreement both sellers and buyers who are eligible to enter into a farming Agreement must be listed after Section 3 of the Act.

PART 7 - OTHER MAJOR ASPECTS OF THE THREE FARM LAWS

Minimum Support Price (MSP)

58. The Central Umbrella Act must provide for the establishment of an MSP to be decided by a Govt Authority in each state or region for every type of produce and promulgated in the routine orders by the Administration periodically.

59. All rates in the farming agreements must not be below the MSP. How a future MSP rate will be decided needs to be examined and laid down. The PepsiCo mechanism can be used as a base for study.

60. All aspects related to the MSP must be included in the Central Umbrella Act.

Nothing is Free

61. In return for subsidies and MSP, the agriculture industry must pay taxes (both GST and Income Tax) and pay for resources provided by the Government. These expenses while it may raise the cost of products will be passed onto the consumer.

62. On the other hand, the producers will be forced to adopt technology and best practices to keep produce at competitive prices and make the whole agricultural mechanism efficient. It will go to provide better facilities for the farmers as the collection will come back to them and make agriculture a self-supporting enterprise without depending on inputs that become a cost to the other taxpayers.

63. **End Free Rides.** The days of free rides should end, while the government does ensure a degree of protection so that while agriculture is market-driven; it also remains profitable and clean.

GST and Income Tax

64. **GST.** All payments in the Farming Agreement must be subject to GST.

65. **Income Tax.** All sources of agricultural income must be taxable. Income must exclude the amount reinvested in agriculture and related enterprise. Only the bottom line must be taxable. The rates can be the same as for the salaried.

66. **Taxes and Subsidies.** A special set of laws will be necessary for these aspects while balancing subsidies and taxation.

White Paper

67. A white paper on these aspects must be circulated and views on the concept and its implementation obtained from the environment.

Subsidies and Other Benefits

68. The Government must review the subsidies and other benefits to bring agriculture in line with market practices.

69. Water for Irrigation and Electricity. Both these must be metered and made payable when provided by a public distribution system and when extracted from the earth. These aspects need more study by genuine experts.

Licensed Commission Agents (Middlemen Arhtiyas)

70. Punjab alone has 28000 or so licenced commission agents. Their role in the process is both legal, necessary and entrenched. The services they provide are mainly logistical cannot be wished away.

71. Should these or can these middlemen's role be eliminated by adopting processes that make them redundant. This is another aspect that needs review; both in the North Indian States and other parts of India. Since the nature of their exact services and functioning will vary a common rule for all states will not work.

Co-operatives

72. The small farmers are unlikely to be in a position to enter into farmers agreement with corporates, nor would corporates like to deal with numerous small farmers, even if they wish to it will not be easy. Here is where the establishment of co-operatives will be necessary. AMUL is our example. Of course, the details of the operation of such co-operatives will be different.

FCI and Government Stocks

73. Losses and Wastage. It is generally learnt that there is a large amount of wastage in FCI godowns. It seems that some of the losses are engineered. One method is to water the grain so that they rot and is declared as waste. It is then sold to middlemen underhand who then sell it to distilleries. This information is based on stories and videos in the environment. With thousands of godowns, there could be any number of possibilities and other methods of grain drain from godowns.

74. These are aspects that need investigation. This is notwithstanding the statement of the Food and Consumer Affairs Minister Shri Ram Vilas Paswan in Apr 2020, that the government has reduced wastage of food grains to negligible by adopting scientific methods of storage and distribution (Economic Times ePaper of 22 Apr 2020). However, pilferage and theft are matters different from wastage and needs to be investigated.

Corruption

75. Corruption is an integral part of India, almost an essential organ. Nothing can function without its integration even into the noblest of intentions. The role of inspectors, *arhtiyas* and everyone else in the chain also need a study to find mechanisms that can avoid any corrupt practices.

The link between Over-regulation and Corruption

76. Wherever there is an inspector raj there will be corruption. Since 1991 we have endeavoured to eliminate the inspector culture half-heartedly. New laws must therefore be self-regulating without the need for another set of inspectors to be policed.

Ban on Companies and Non-Agriculturists Acquiring Agricultural Land

77. As of now only agriculturist or farmers holding agricultural land can acquire agricultural land in most (or maybe all) states.

78. There should be a ban on the following two aspects: -

- (a) Taking over of farmers land by sponsors, buyers etc in a Farmers Agreement in the event of a failure of the Farmers Agreement.
- (b) The buying of agricultural land from any farmer by non-agriculturists including companies.

79. This an aspect that needs study and incorporation in the Central Umbrella Act.

Protection to the Farmer

80. While all the above are incorporated the protection of the farmers' interest including his land while at the same time providing the necessary protection for it to function without the fear of collapse and bankruptcy must be built into the Central Umbrella Act.

PART 8 - PROCESS OF PUBLIC DISCUSSION AND OBTAINING INPUTS BEFORE MAKING A LAW

Draft Laws Circulation

81. **White Paper.** Before the introduction of the Umbrella Law, a white paper outlining in detail the whole scheme of things must be published and circulated along with the proposed draft laws for discussion within the political parties first and then after further honing circulated to the public.

82. **Acts and Rules.** The draft of the Acts and Rules must be released together. This will enable an understanding of how the entire mechanism functions and remove all burrs that can cause a rough ride during implementation.

Ordinance Followed by Updated Act

83. **Ordinance.** The laws must first be rolled out as an ordinance so that improvements can be made before enactment.

84. **The Acts.** They must be enacted after incorporating the necessary changes observed during its operation as an ordinance.

Involve Stakeholders

85. The laws are meant to enable the stakeholders to carry on their business in the best possible manner. Thus, stakeholders must be viewed as participants in law-making. At the same time, people have a responsibility as well.

PART 9 - CONCLUSION

General

86. While this document does not address all possible issues; it aims to establish that participative law-making that are self-regulatory is mandatory for the country to run in cruise mode.

Farming Environment

87. In the specific instance of the Farming Environment in the country, the Government must look at a wider and holistic set of legislation to manage and regulate the farming sector so that we can have a need-oriented farming sector that is in line with market trends and is self-supporting and contributes multifold than is currently to the National GDP.

88. And at the same time while leaving scope to the States and UTs to manage their Farming Environment in the best possible way taking into consideration local and regional considerations.

Annexure 1

This paper can be seen at
<https://www.PepsiCoindia.co.in/live/story/partnership-with-farmers>

Annexure 2

This paper can be seen at
<https://iosrjournals.org/iosr-jbm/papers/ICSE%20Conference/14.75-85.pdf>

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