

Agrarian Acts 2020 - Liberalisation and Privatisation of Marketing Systems with Primacy for Agri-corporates¹

J Johnⁱ

I will be looking at the three agrarian Acts based on insights from an involvement I have had with small tea farmers. Tea is usually not considered an agricultural commodity because it comes within the purview of the Ministry of Commerce and Industry. However, there are more than 300,000 small farmers with less than 2 acres of land on an average, who contribute 50 per cent of the tea being produced in India, (the second largest producer of tea in the world).

The tea farmers must give their product for processing within four hours of plucking of the leaves. There are several questions that this raises, which I will not be discussing in this analysis. How do farmers negotiate the price and what happens to the product transformation along the value chain? Where are the prices determined? What role do the farmers have in determining its price? Being a commercial product, what are the implications of the tea being controlled by the central government? Is there a bench mark price or a minimum price for tea? Who determines the benchmark price? What are the mechanisms within which these are being monitored? It is, unsurprisingly, difficult to examine all these topics comprehensively within one article.

Instead, I will be looking at the current acts in the context of the issues that the tea farmers face with specific reference to proposals regarding organisation and operation of the market, accountabilities of parties, jurisdiction within India's federal structure and the issue of remunerative price for farmers.

Even subsistence farmers have to sell something in the market in order to sustain themselves, to get other agricultural products or to purchase other materials for their daily living. These exchanges usually take place in the local market. However, as the structure of agriculture and the market has been changing since 1991, today the small farmers do not actually know where to go and how to negotiate the prices. They do not know where their primary product, or their locally processed product will go. There exists a marketing problematic since the local market is being destroyed, farmers do not know where and how to negotiate prices. Buyers also do not know how to reach farmers. This is a reality.

There have been attempts to address this problem of agricultural market in Indian situation. In 2003, the NDA government came up with a model APMC Act, in which the states (not the Central Government) were given responsibility and to regulate market. In 2016, after e-National Market (e-NAM) had been introduced by the NDA government and, in 2017, the same government came up with another bill called "The ——— State/ Union Territory Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2017". Here, the States 'domain in managing agriculture and the APMC while giving propositions for opening up the market beyond APMC. A little earlier, the UPA governemnt had in the XII Five Year Plan 2012-17 has constituted a Working Group on

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“Agricultural Marketing Infrastructure, Secondary Agriculture and Policy required for Internal and External Trade.” It too was trying to address issues related to the agricultural market — too many intermediaries are there, inadequate infrastructure for storage and sorting, private sector not willing to set up logistics, lack of transparency of price-setting mechanisms etc were flagged. In the document produced, the emphasis was on small producers, particularly how the capacities of the small producers could be strengthened and how small producers could take part in the agrarian value chain and their inclusion in the wider economy. Even in 2017 the NDA government talked about the role of states and union territories in the management of agrarian markets.

The situation changed with the adoption of the Farmers 'Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020, and The Essential Commodities (Amendment) Act, 2020. The two key policy instruments that govern agricultural marketing in India through which pricing, procuring, stocking, and trading of agricultural commodities are regulated are the Essential Commodities Act (ECA), 1955, and the Agricultural Produce Market Committee (APMC) Acts by the states. ECA further facilitated procurement of food crops by the Food Corporation of India (FCI) and its distribution through fair price shops across the country. The three Acts substantially alter the existing institutional arrangements for food procurement and distribution.

The important change has been to take away agriculture from the exclusive jurisdiction of the state governments. This is an issue of violation of constitutional provisions because agriculture is a not either in the central list or in the concurrent list. It is in the state list. In the state list, eight entries contain terms relating to agriculture: entry 14: agricultural education and research, pests, plant diseases; entry 18: rights in or over land, land tenures, rents, transfer agricultural land, agricultural loans, etc.; entry 28: markets and fairs; entry 30: agricultural indebtedness; entry 45: land revenue, land records, etc.; entry 46: taxes on agricultural income; entry 47: succession of agricultural land and entry 48: estate duty in respect of agricultural land. The Acts are changing the scenario, fundamentally.

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

The Farmers 'Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 is intended to undo the legally constituted state level APMCs. This dismantling of APMCs is achieved by a provision in Section 6 of the Act, which prevents APMCs from imposing any market fee or cess or levy on any farmer or trader. It not only strikes at the financial viability of the operation of APMCs but also eliminates a source of revenue of state governments - the APMC market fee. Further, the Act permits the sale of agricultural produce outside the mandis regulated by the APMCs wherever they might get a good price. Theoretically, it sounds great. Practically, however, for more than 85 per cent of the farmers, who cultivate in small plots of lands, selling their products in mandis somewhere else in India to realise a better price is neither practical or feasible. It sets the ground for the private sector to engage in unregulated procurement from farmers through their agents because big corporates may not open their shops in remote areas. The earlier bills of the NDA and what the UPA proposed, allowed the private sector to operate in the agrarian market. However, they had not suggested the undoing of the APMCs.

The Acts also recognise the possibility that disputes may arise in the contractual relationships between the farmers and the buyers; however, it restricts the disputes settlement process within a bureaucratic framework and restraints civil courts from entertaining such disputes. The disputes must be raised before a Conciliation Board to be set up by the Sub-Divisional Magistrate. If not resolved, the dispute can be raised at an Appellate Authority constituted by the Collector. If the

issue still does not get resolved, it will go to the Joint Secretary ...that is it. One will have to accept whatever resolutions the bureaucratic system proposes.

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

The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020, is meant to facilitate acceleration of contract farming. It must be kept in mind that contract farming is not new in India; it is on the strength of contract farming that big food retailers and agri-corporates such as Pepsi, ITC and Reliance grew in India. Contract farming is an agreement between a farmer and a buyer or a marketing firm that a specific quantity of a product of a specific quality will be bought by the firm on a pre-determined price, in most cases a forward buying offering, at times, with technical and input support. What distinguishes the current Act is that it offers contract farming as a panacea for agrarian distress and legalises farmers' integration with agri-corporates without providing safeguards for issues such as the unequal power relationship and the farmer losing her/his right to approach other buyers in the market.

The farming agreement involves an agreement reached between a farmer and a sponsor or a third party prior to the beginning of the production of agricultural goods. Sponsors will have to offer farm services and the farmers will have to accept farm services. Anyone who has a PAN card can be a sponsor. There is no requirement for the sponsor to be registered anywhere. More seriously, in the farming agreement, a written agreement is not necessary. Section 3.1 says, "A farmer *may* enter into a written farming agreement." A verbal agreement has been approved of in the Act and in such instances, therefore, how can one raise a dispute? Who will have the control in the agreement process?

Another issue is on price determination although price assurance is part of the title of the Act. The Act does not give a definitive direction on price determination; the procedural suggestions are optional because the term used is *may*. Section 5(b) says, "Price reference *may* be linked to the prevailing prices in specified APMC yard or electronic trading and transaction platform or any other suitable benchmark prices." It does not talk about the methods by which the prices will be determined. It says that it is the responsibility of the Sponsor to ensure that all preparations for the timely acceptance of such delivery; but it does not talk about what steps can be taken if the sponsor does not take delivery of the product for any stated or unstated reasons. If that is the ground for raising a dispute, imagine how negatively it will affect small farmers!

At the same time, there are exemptions and these pertain to the power vested in the state in the Act. Section 7(1) gives power to the state to exclude any agricultural product from the purview of the Act. It says, "Such produce shall be exempt from the application of any State Act, by whatever name called, established for the purpose of regulation of sale and purchase of such farming produce." Section 7(2) clearly states that no law, the Essential Commodities Act, 1955, or any control order or any other law for the time being in force, which stipulates any obligation related to stock limit, shall be applicable. The words, *may* and *shall* have been used very selectively and purposely and, of course, the word *shall* has not been used for issues that require empowerment of farmers when preparing and executing the contract.

In the case of the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020, too, the dispute settlement process is executed within a bureaucratic framework. If the Conciliation Board, which is part of the farming agreement, fails to resolve an issue, the dispute will be referred to the sub-divisional magistrate. From there, it will go to the Appellate Authority constituted by the District Collector. From there, it goes to the Joint Secretary,

Government of India. All the positions are within the bureaucratic system and the dispute resolution bodies are nominated by the government bureaucracy.

The Act exempts from review the performance of the officers in charge when executing the implementation of the provisions of the Act or those involved in the dispute settlement processes. They are exempted from prosecution. These exemptions raise questions on the democratic right of the citizens to challenge bureaucratic decisions and the accountability of the bureaucrats to society at large. Section 18 says, "No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Registration Authority, the Sub-Divisional Authority, the Appellate Authority or any other person for anything which is in good faith done or intended to be done under the provisions of this Act or any rule made thereunder."

The Act unambiguously states that the civil court does not have any jurisdiction over the disputes arising from the agreement between farmer and the sponsor. Section 19 says, "No Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any dispute which a Sub-Divisional Authority or the Appellate Authority is empowered by or under this Act to decide and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any rules made thereunder."

The Essential Commodities (Amendment) Act, 2020

The Essential Commodities Act was discussed in 1948 immediately after India gained independence. The context was the turmoil that partition had created when people faced severe shortages people faced in essential commodities whereas unscrupulous traders engaged in hoarding. As the Constitution was being written, Article 369 had the provision that law applicable to states can be enacted by the central government but would be valid only for 5 years. To overcome this, a constitutional amendment was made. The Essential Commodities Act 1955 was brought in under Article 369 of the Constitution by bringing in an amendment to the entry 33 in List 1 in the Seventh Schedule to List 3 (concurrent list). And that pertained not to agriculture as such, which remained as a state subject, but to "trade and commerce in, and the production, supply and distribution of 'essential' commodities such as drugs, oils, kerosene, coal, iron, steel and pulses. In the 1955 Act the powers have been delegated and the State Governments and Union Territory Administrations have been empowered to implement the law, monitored by the central government. The interests of the citizens were further protected by distributing such commodities through hundreds of thousands of fair price shops spread across India. This means that Essential Commodities Act, 1955, must also be read with the national policy on the food security of its citizens. During the current amendment of the Essential Commodities Act, 1955, there has not been any informed debate in the Parliament.

Pointing out that certain provisions in the 1955 Act inhibit large-scale private investments in the creation of warehouses, supply chain and agricultural markets, the Essential Commodities (Amendment) Act, 2020, provides that there cannot be any stock limit for food items. It further says that the stock limit of any agricultural produce may be regulated only if there is a full increase in retail price of horticultural produce, or a 50 per cent increase in the retail price of non-perishable agricultural food items over the price prevailing in the immediately preceding a year or the average retail price in the past five years, whichever is lower. It also provides for exemption to exporters, traders and value chain participants. The amendment, in practical terms, is an unencumbered license for not only corporate food chains but also traders to stockpile essential commodities. Further, one must also wait and see the disastrous impact it might have on the government's capacity and responsibility in ensuring the supply of essential commodities to the people because it will impinge on food procurement and its distribution through fair price shops.

Minimum Support Price

A term that is missing from all the three Acts is 'Minimum Support Price', or MSP. It must be kept in mind that, in India, the MSP does not have a legal backing. MSP is not a statutory right of the farmers. It is an administrative decision or declaration. The centre, through the Cabinet Committee on Economic Affairs (CCEA), currently fixes MSPs for 23 farm commodities — seven cereals (paddy, wheat, maize, bajra, jowar, ragi and barley), five pulses (chana, arhar/tur, urad, moong and masur), seven oilseeds (rapeseed-mustard, groundnut, soyabean, sunflower, sesamum, safflower and nigerseed) and four commercial crops (cotton, sugarcane, copra and raw jute) — based on the recommendations of the Commission for Agricultural Costs & Prices (CACP's). Although the MSP is benefiting only 6 per cent of Indian farmers, it must be recalled that the MSP system was started with an MSP for wheat in 1966-67 with a dual purpose in mind: one, to ensure that the government had reserves of essential food crops that could be sold to consumers at subsidised rates under the PDS system; and two, to address farmer distress arising out of volatility of prices.

CACP bases the MSP on the assessment of three categories of costs, namely, A2: the actual expenses paid by farmers in cash and kind for seeds, fertilisers, pesticides, paid labour, irrigation, etc.; A2+FL: the A2 cost along with an adjustment for the costs of unpaid family labour (given traditional Indian farming practices involve families) and C2: A2+FL along with all other production costs, including loans, rentals, cost of land and other fixed capital assets, that is, a comprehensive cost of production. Nevertheless, the decisions are usually based on A2-FL costs, which usually are much below a remunerative price for farmers. Consequently, farmers have to constantly struggle and demand a fair assessment of the costs of production when determining MSP for their products.

The most important and widespread demand is that the MSP should be fixed as per the recommendations of National Commission of Farmers Report, 2004 (M. S. Swaminathan Commission) that the MSP should be based on C2+50 per cent of C2 costs.

The three Acts do not touch upon this basic demand of the farmers.

Conclusion

Prime Minister Modi, in his 69th edition of 'Mann ki Baat' delivered on 27 September 2020, defended the passage of the farm bills saying they had empowered farmers and given them the freedom to sell their produce anywhere and to anyone. He further said that the reforms in the farm sector would benefit both farmers and consumers in the "absence of the middlemen". From neither the Prime Minister nor the concerned ministers has there been an effort to discuss the current farm sector reforms within the overall agricultural policy of the government addressing other key issues such as food and nutrition security of the people of India, remunerative prices for farmers, national self-sufficiency in food production, food being made available at affordable prices to the consumers, performance of agricultural institutions and essential public expenditure in the agrarian sector. Marketing reforms and changes in the marketing regulatory framework have been presented as a panacea for the problems being faced by the farm sector. Farmer organisations have not bought to the idea that these agrarian laws protect their interests.

Coming specifically to the three agrarian Acts, there are reasons to challenge the Constitutional validity of the Acts and whether these have overstepped the Federal character provided for in the Constitution of India. We may have to revisit the Planning Commission's and previous government's documents which provide for agrarian reforms without usurping the domain of the states in managing affairs of agriculture.

The relationship between farmers and buyers cannot remain ambiguous; the relationship must be based on written agreements between parties. Simultaneously, the buyers must be registered.

There should not be any exemption for central and state governments as well as associated bureaucrats from prosecution, establishing accountability at all levels.

Civil courts must be allowed to review disputes arising out of farmer-buyer relationships and the dispute resolution must not remain an exclusive bureaucratic domain.

A law must be enacted that establishes minimum support price (MSP) as a legal right of farmers.

The critical role being played by the local markets must not be overlooked, considering geographical diversities, small farm sizes and food security of local communities.

ⁱ J John is Editor, Labour File. Email: jjohndoor@mac.com