**DEMAND FOR REPEAL OF THE 3 FARM LAWS**

**Parliament cannot legislate on agriculture;**

**it is in the exclusive domain of the State Legislatures**

The preliminary objection to the three Farm laws is that the Parliament and the Government of India do not possess legislative and executive powers over the domain of agriculture and agricultural markets. Therefore the 3 farm laws are unconstitutional.

As per **Article 246 (3) and List II of the Seventh Schedule**, the State Legislatures have exclusive power over the domain of **agriculture (Entry 14), land (Entry 18), fisheries (Entry 21), markets and fairs (Entry 28) and taxes on agricultural income (Entry 46).** These powers are absolute and are not subject to any entries in the Union List (List I) or the Concurrent List (List III).

The argument of the Government of India is that the Parliament has legislative competence to pass the 3 farm laws as per Entry 33 of the concurrent list, which includes “trade and commerce in, and the production, supply and distribution of, -- … foodstuffs”. The reasoning of the Government of India wrongly assumes that the three farm laws relate not to agriculture or agricultural marks (both of which are in the exclusive domain of the State Legislature), but with “trade and commerce”. This is obviously wrong.

The Supreme Court of India in ***ITC Ltd. v. Agricultural Produce Market Committee and Ors***., (2002) 9 SCC 232, has held that ***“various State Legislatures have enacted the Agricultural Produce Marketing Acts for regulating sale and purchase of the agricultural produce and levying market fee”*** **in *“exercise of power under Article 246 (3)****”.* It is important to note that **Article 246 (3) relates only to the State List (List II)** of the Seventh Schedule. The Union List is covered by Article 246 (1) and the Concurrent List is covered by Article 246 (2). Therefore, as per the Supreme Court’s judgment the power to regulate sale and purchase of agricultural produce and levy market fees is under the **exclusive domain** of the State Legislature.

It is to be noted that the terms “trade and commerce” in “foodstuffs” in Entry 33 of the Concurrent List do not cover the sale of agriculture produce in the mandis.

The legislative history of **Entry 33** of List III shows that the it is intended only for the purpose of securing the **supply of essential commodities**. Following is a brief description of the legislative history as has been recorded by the Supreme Court of India in *K. Janardhan Pillai & Anr.* v*. Union of India & Ors.* (1981) 2 SCC 45:

* Govt. of India Act, 1935:
	+ Entry 27 of List II- Trade and Commerce; markets and fairs
	+ Entry 29 of List II- Production, supply and distribution of goods, subject to List I with respect to development of certain industries under Federal control.
	+ Entry 34 of List I- Development of industries under Federal control expedient in the public interest.
* Emergency proclaimed by Governor-General during World War II- u/s 102 of GOI Act, 1935—Federal Legislature acquired power to legislate on all subjects in the Provincial List.
* One of the laws passed by Federal Legislature during Emergency/WW II was to enable Federal Govt. to issue orders to regulate production, supply and distribution of **essential commodities**.
* Emergency revoked in 1946—all laws passed during WW II ceased to have effect.
* Since it was felt that Federal Legislature should continue to have power to make laws on the subject of **production, supply and distribution of** **certain essential commodities**, British Parliament amended the Government of India Act, 1935 in 1946.
* In the **1946 Amendment**, the subject of trade and commerce (and production, supply and distribution) within a province of “**foodstuffs**” was introduced into the GOI Act, 1935.
* Governor-General issued the Essential Supplies Ordinance, 1946, which was thereafter replaced by the **Essential Supplies** (Temporary Powers) **Act, 1946**. This Act was extended up to 31.3.1950.
* Constitution- List III- Entry 33- only dealt with industries under control of Union (expedient in the public interest).
* **Article 369** was enacted as a **“temporary and transitional” measure** conferring legislative powers on Parliament **for a period of 5 years** with regard to matters enumerated in the concurrent list, namely: “trade and commerce within a State in, and the **production, supply and distribution of…. foodstuffs”.**
* Parliament extended the life of Essential Supplies Act, 1946 till 1955.
* **Constitution amended in 1954- substituted Entry 33 of List III-** to include trade and commerce within a State in, and the production, supply and distribution of **foodstuffs.**
* **Pursuant to the new Entry 33 in List III, Parliament enacted the Essential Commodities Act, 1955.**

**Therefore, it is clear that the introduction of “foodstuffs” in Entry 33 of List III was solely for the purpose of ensuring supply of foodstuffs as an essential commodity.**

Entry 33 of List III regulated Entry 26 of List II (trade and commerce within the state) and Entry 27 of List II (production, supply and distribution of goods), only to ensure supply of essential commodities as per the Essential Commodities Act, 1955.Agriculture (Entry 14, List II) and Markets and Fair (Entry 28, List II) are in the exclusive domain of the State Legislature, not subject to Entry 33 of List III.

The High Court of Calcutta in ***Atulya Kumar De* v*. Director of Procurement and Supply*** has held that paddy was foodstuff within the meaning of the Essential Supplies (Temporary Powers) Act, 1946. Similarly, High Court of Punjab and Haryana in ***Sujan Singh Matu Ram* v*. State of Haryana*** held that wheat was within the meaning of “foodstuffs” for the purpose of the Essential Commodities Act.

**To summarize from the Constitutional provisions as well as the judgments of the Supreme Court of India and several High Courts, the sale and purchase of agricultural produce, and agricultural markets, are under the exclusive domain of State Legislatures and the Parliament is not competent to legislate on these matters. The Parliament’s power under Entry 33 of the Concurrent List extends only for the purpose of the Essential Commodities Act, and not the ordinary and regular sale and purchase of agricultural produce in mandis.**

**Preliminary objections against the 3 Farm Acts**

**The Acts are based on the following wrong assumptions:**

1. **That farmers were not free to sell anywhere they like.—**In most states, the existing State-level AMPC Acts give such freedom (Maharashtra, Karnataka, Andhra Pradesh, Gujarat, Uttar Pradesh, Odisha).
2. **That farmers enjoy an equal bargaining status with the buyers and that their problem is lack of more choice**.— Farmers do not have holding capacity in terms of storage or finance and are hence forced to sell immediately after harvest. Hence their bargaining capacity in the market is very limited, and they face a huge inequality in the market place with agri-business companies and traders on the other side.
3. **That de-regulation of traders and companies without any oversight and information is useful to farmers**.—Farmers need the regulatory protection from the government in their interfaces with markets. This is the reason why APMC Acts exist in the first place, to ensure fair market practices for farmers who are mostly small and marginal farmers, who face a huge inequality in the marketplace.
4. **That removing restrictions on traders and agri-business will necessarily mean better price for farmers**. The farm laws assume that many fair-playing, non-cartelising buyers would line up in front of farmers and buy from them directly without any intermediaries and aggregators and the freed-up margins from middlemen will accrue to farmers. This textbook picture of competition does not hold true, and deregulation would result in monopsonies and domination of a few big players, now outside the mandis.

**Demanding repeal of the laws for the following reasons:**

1. Because the 3 Farm Acts amount to retreat of the government from its responsibility to protect the interests of the farmers. The core message of these three acts as a whole is that the Government of India does not care for, or respect the federal polity of the country, welfare provisions enshrined in the Constitution and is happy to let the small and marginal farmers as well as poor consumers fend for themselves. These would result in unregulated freedom to corporates and agri-businesses at the expense of crores of small and marginal farmers of India. Farmers demand nothing short of repeal of these legislations because they wish to save the future of farming and farmers in the country.
2. Because farmers were never asked for by the farmers or their organisations, because they did not involve any pre- or post- legislative consultation with the principal stake-holders with no draft Bills circulated for public comments and so on which is an important part of any good law-making process, because these were rushed through the Parliament in violation of parliamentary procedure, and because these were illegitimate right from the beginning in terms of the processes adopted to ram them down the throats of farmers.
3. Because farmers in the country have been fighting for a legal entitlement for guaranteed realisation of a remunerative MSP for all farmers and all agricultural produce – the government chose to ignore this demand despite lakhs of farmers coming into Delhi in 2017 and 2018. On the other hand, it chose to bring in legislations which go in the exactly opposite direction.
4. Because ‘Agriculture’ and ‘Markets’ are State subjects under the Constitution, and through these Acts, the Centre is blatantly encroaching into the domain of the State governments.

**Objections to the APMC Bypass Act [Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020]**

1. **Undermining the APMC Market yard system leading to collapse of market yards:**
* **Section 2(m)-** The Act severely undermines the APMC market yard system by creating Trade Area which consists of the entire area outside the market yards which are notified under State APMC Acts. The Act creates unequal playing field between two market systems in every area of the country operating under very different rules.
* **Section 6-** The transactions in the Trade Area are not subject to the market fees and are not regulated under the state government’s APMC Act on price, payments, grading processes, and dispute resolution, whereas the transactions within the APMC market yard are subject to market cess and are regulated by the state government’s APMC Act. This makes the trade area hugely advantageous to traders and companies, and offers very little protection for the farmers’ interests. This will lead to traders and companies increasingly making their purchases exclusively outside the APMC market yards leading to the collapse of the market yards.
1. **Absence of APMC markets leads to lower prices for farmers:** Farmers who have an accessible, functioning APMC market obtain a better price, compared to farmers who are located in remote areas without access to functioning APMC markets. In Bihar, after the repeal of APMC Act in 2006, farmers have suffered from low prices - the prices of paddy and maize, for example, are at least 25% below MSP in Bihar in the past few years.
2. **Receipt as sole proof of transaction for the farmer**: For a farmer who makes a sale in the trade area, the sole proof of transaction itself lies in a receipt that farmers are supposed to get upon delivery, which is left entirely to the buyer and the ability of the farmers to demand and insist on one. When the transactions happen in a dispersed with no oversight and enforcement, the farmers’ ability to get a receipt and take up any dispute resolution based on that is limited.
3. **Weak Dispute Resolution mechanism and No Recourse to Civil Courts Sections 8, 9, 10, 15)**: The dispute resolution mechanism is very weak, putting the onus entirely on the farmers. If there is any dispute, the farmers are required to go to the Sub-divisional Magistrate, instead of settling them through the Market Committee and state agricultural officials as it happens in the APMC market yard system. The farmers do not have recourse to a civil court, which further undermines their ability to get justice in cases of exploitation. Furthermore, the dispute resolution is only meant for particular transactions and not for any faulty mechanisms which are exploiting the farmers.
4. **No protection to farmers on issues other than payments**: The Act doesn’t provide protection for the farmers on any matters other than payments, such as faulty mechanisms of grading, moisture measurement, weighing, etc. These are often sources of big losses to the farmers when they are transacting outside the APMC market yards, whereas in the APMC market yards, there are ready mechanisms for reporting and addressing these issues.
5. **No Provision to guarantee MSP as the floor price**: The Commission of Agricultural Costs and Prices (CACP) has also recommended in its reports, including 2017-18, that MSP should be backed by a legal guarantee. However, the Act does not have any provision for this. Instead, it reduces the ability by the governments to make effective market intervention by de-regulating and invisibilizing the transactions
6. **No space for collective bargaining by farmers:** The daily auction of agricultural produce in the APMC market yards provides a collective bargaining space for farmers to obtain a remunerative price, even with the limitations of the market yards. It provides a space for collective intervention by farmers and farmer organizations to expose and counter exploitative practices and collusion by traders, commission agents and companies. A further strengthening of the regulations in the market yards is required to ensure fair practices. However, this Act, by leading towards a collapse of regulated market yards, gives it a free-for-all to all companies and traders to exploit farmers.

**Objections to the Essential Commodities (Amendment) Act, 2020**

1. **Section 3(1A)-- Market Domination and Hoarding by Companies**: Big traders will now have freedom to stock any amount of food commodities (foodstuffs, including cereals, pules, potato, onions, edible seeds and oils). They will build huge storage and processing facilities, and develop complete market domination. This means that they will dictate terms to farmers – which is likely to lead to less prices to farmers, not more income.
2. **Government has surrendered its power to regulate:** There used to be several regulatory tools with the government in the earlier ECA: licensing, price control, compulsory licensing, stocking, information collection and produce for inspection records, entry/search/examination of premises and seizure etc. The amendment does away with all these regulatory tools to help protect the consumer interest.
3. **Power to regulate only under extra-ordinary circumstances:** The extraordinary circumstances are specified in Section 3(1A)(a) which may include war, famine, extraordinary price rise and grave natural calamity. The price trigger for extraordinary price raise is very high – 50% hike in price in case of non-perishables and 100% hike in case of perishables, as per Section 3(1A)k so that it would get triggered very rarely.
4. **Exemption for export houses:** Even under extra-ordinary circumstances like war and famine, stock limits cannot be imposed on entities within their installed capacity of processing, or demand for export. This essentially exempts all the big companies from this Act even under extraordinary circumstances.

**Objections to the Contract Farming Act [Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020]**

1. **Does not address serious shortcomings with existing contract farming regulation:** The existing APMC Acts in states already allow contract farming based on the Model APMC Act of 2003, whose provisions were adopted by most states. However, these Acts have not provided effective regulation in practice. In reality, most contract farming arrangements simply did not comply with these Acts. Very few contracts were written and registered with the Marketing departments. There were no provisions to compel the companies to make written agreements, hence all contract farming remained unregulated, with no protection to farmers from exploitation.
2. **Only written agreements recognized as farming agreements:** As **per Section 2(g)**, a farming agreement is a written agreement. As per **Section 3(1)**, “a farmer may enter into a farming agreement in respect of any farmer produce.” However, almost all contract farming arrangements in India are informal and unwritten, therefore the farmers in those arrangements are not provided any protection under this Act.
3. **No provisions that compel companies into making their agreements written:** There are no provisions in the Act that would compel companies into making their agreements written and hence under regulation, nor are there penal provisions for not being so. Therefore, unregulated contract farming will continue as it is.
4. **Defective mechanism for dispute resolution:** Under Chapter III (Dispute Settlement), Section 13 specifies that all farming agreements shall provide for conciliation process and disputes will be settled through conciliation board. This process is alien to the farmers, and the companies with their lawyers have an opportunity to dominate the dispute settlement, especially with the farmers having no recourse to civil courts.
5. **Bar of jurisdiction of civil courts**: In the Contract Farming Act, where everything else has been kept voluntary, the statute now puts a bar of jurisdiction of civil courts on disputes arising out of contract farming arrangements (Sec.19).
6. **No Provision to guarantee MSP as the floor price**: The Act does not have any provision for this. Instead of referencing the price to be assured price to be pegged at remunerative MSP, the price reference was fixed to the mandi price which is in any case engineered to collapse due to the APMC Bypass Act.
7. **Crop losses not compensated:** There are no mandatory provisions for crop loss compensation for farmers in the Contract Farming Act, although these agreements are likely to take place in unsustainable and riskier production conditions (monocropping, exotic crops, intensive farming paradigm etc.).
8. **Land alienation-** A reading of Sections 8, 9, 14 and 15 shows that farmers could lose their land due to the Contract Farming Act.

Firstly, Section 8 does not prohibit the transfer of land of the farmer completely. Section 8 states that “no farming agreement shall be entered into ***for the purpose of:*** (a) any transfer, including sale, lease and mortgage of the land or premises of the farmer…”

This means that while transfer of the land may not be the ***purpose*** of the agreement, it may possibly be part of the agreement between the contracting parties, i.e. the farmer and the sponsor, with the “purpose” of the agreement being contracted farming.

Secondly, Section 9 prescribes that the farming agreement may be linked with insurance or credit instruments entered into by the farmer parallelly. Thus, if a farmer takes a loan to be able to procure the inputs from the sponsor, and there is a crop failure, the farmer will have to sell off their lands to be able to repay the loan to the lender and avoid defaulting on the loan repayment. There is no provision in the Act which exempts the farmer’s agricultural lands or premises for the purpose of such credit instruments.

Thirdly, Section 14 (2) (iii) and Section 14 (6) state that the Government can make an order against the farmer for recovery of the amount due to the Sponsor on account of any advance payment or cost of inputs, and that such amount will be recovered as arrears of land revenue. While Section 15 purports to exempt the farmer’s agricultural land from such recovery, recovery of the amount by sale of other movable or immovable properties of the farmer will result in the farmer being compelled to sell their agricultural land for the sake of survival.

Therefore, not only are there no adequate provisions for safeguarding land holding of the farmer, the Act creates a structure that will lead to systemic and systematic landlessness and pauperization of the farmers.