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THE THREE FARM LEGISLATIONS: A LESSON TO RELOOK AT THE 7TH SCHEDULE OF THE CONSTITUTION

INTRODUCTION

India being a federal polity,¹ the Constitution of India ["Constitution"] divides the legislative powers (apart from other things) between the Indian Parliament ["Parliament"] and State Legislative Assemblies ["Assemblies"]. Chapter I of Part XI of the Constitution contains elaborate provisions for regulating the legislative relations between the Parliament and the Assemblies. For our purpose, article 246 of the Constitution is relevant which deals with the subject-matters enumerated under three lists in the Seventh Schedule on which Parliament and/or Assemblies can make laws. Broadly, List I (Union List) contains those matters which pertain to national importance and whereas List II (State List) deals with matters of local and state concerns. List III (Concurrent List) deals with neither national or local matters rather it is a twilight or a grey area where as per the need and requirement, any of the lawmakers can make laws. The demarcation of subject-matters in the seventh schedule is very essential to maintain a federal fabric within the parameters of the Constitution. However, the way it is impossible to demarcate the subject-matters strictly, the similar way it is impossible to maintain the Parliament and Assemblies within their sphere and not to encroach upon the powers of each other².

Recent acts of the central government encroaching upon the exclusive domain of the state governments have highlighted the issues with the placement of subject-matters in the three lists. For example, how central government used its power under the Disaster Management Act, 2005 during the Covid-19 pandemic though 'health' exclusively being a state subject. Similar instances of encroachment have been seen in the cases of the

of the Lokpal and Lokayukta Act, 2013, the National Investigation Agency Act, the National Food Security Act, the Land Acquisition and Rehabilitation and Resettlement Act, et cetera. Very recently, in 2020, the central government allegedly enacted 2 new national farm laws³ and amended another⁴ though subjects like 'agriculture' and 'trade and commerce within a state' are state subjects. In this short article, an endeavour has been made to understand and find out provision(s) of the Constitution which could have possibly given Parliament the power to legislate on the subject-matter covered under these three farm laws.

LOCATING PARLIAMENT'S POWER TO ENACT FARM LAWS

The statement of objects and reasons or anything of any of the three farm laws⁵ do not make it clear under which provision(s) of the Constitution, the Parliament has legislated and enacted these laws. Looking at the short title of these Farm laws prim facie it seems that the laws majorly deal with 'farm', 'farmers' and 'agriculture'. On a bare perusal of the Seventh Schedule of the Constitution, we get to know that neither 'farm' nor 'farmer' find any mention in any of the 3 lists, whereas 'agriculture' appears at total 15 places. Deciphering it further, in the Union List, entries 82, 86, 87 & 88 mention the word agriculture while excluding it from imposition of taxes and duties on income and assets arising out of agricultural land. Under the Concurrent List, entries 6, 7 & 41 talks about transfer of property and various contracts however excludes agricultural land. Under the State List, entries 14, 18, 28, 30, 46 & 47 inter alia deal with taxes and duties on agriculture and agricultural land. The entries in the above list relating to agriculture



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¹ Whether Indian polity has a federal structure or not is and has always remained a contentious issue, for neither the Constitution nor any legal document makes any reference to it. The Supreme Court of India in the judgment delivered in the case of *State of West Bengal v. Union of India* (AIR 1963 SC 1241) observed that India is not federal polity. Three decades later, the same court in *S. R. Bommai v. Union of India* (AIR 1994 SC 1918) observed that federal structure is a basic feature of Indian Constitution. The noted scholar **KC Wheare** on the other hand has said that Indian Constitution in practice is quasi-federal and another noted legal scholar **Durga Das Basu** calls Indian Constitution a combination and blend of unitary and federal features both.

² So far, to resolve such disputed between the centre and state, the judiciary has invoked the doctrine of harmonious construction, doctrine of pith and substance and the doctrine of colourable legislation thus ensuring healthy functioning of the Constitution.

³ The Farmers' Produce Trade and Commerce (Promotion & Facilitation) Act, 2020; and the Farmers' (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020.

⁴ The Essential Commodities (Amendment) Act, 2020.

⁵ For more about these three farm laws, please refer to the first 4 issues of the Farm Laws series available at [Knowledge Bank - MCO Legals](https://www.mcolegals.com).

make it abundantly clear that the makers of the Constitution never envisaged giving powers to the Parliament over the subject-matters relating to agriculture or agricultural land.

Further reading these laws, it seems that they also deal with 'production, supply, distribution', 'trade and commerce' of agriculture goods and services. In State List, entries 26 & 27 deal with such things but restrict the same within the state itself. Also, there is another entry - entry 28 which deals with markets and fairs. However, the farm laws make provisions for inter- and intra-state barrier free trade and also allow the freedom of trade out of the state recognized agriculture markets, hence keeping the laws out of the purview of State Assemblies. Also, it is pertinent to notice here that the 26th and 27th entries are subject to entry 33 in the Concurrent List which deals with 'trade and commerce in, and the production, supply and distribution of food stuffs', etc.

From the above discussion, considering the subject-matters the laws cover and after ruling out any other probability, it seems that the Parliament has legislated the farm laws under entry 33 of List III of the Constitution.

However, be that as it may, if we go deep into the history of entry 33 then we get to know that the present entry 33 is a substituted one and doesn't reflect the original intent of the makers of the Constitution. Originally, under article 369 of the Constitution the responsibility of 'trade and commerce in, and the production, supply and distribution of food stuffs', etc. was temporarily entrusted to the Parliament for a period of 5 years beginning from 1950. However, in order to extend this power of the Parliament, the Constitution was amended in the year 1954 and the entry 33 was substituted to include this subject-matter.

If we see, the passing of the amendment was not without any opposition. Notably, 7 members out of the total 58 members of the Joint Committee dissented terming the proposed Constitution (Third Amendment) Bill (now Act) as *rendering State power, autonomy and rights illusory if Parliament exercises legislative powers and functions over these subjects.*⁶ In the Parliamentary discussions on the Bill, Mr. Ashok Mehta and Mr. KK Basu opposed the introduction of the Bill.⁷ According to Mr. Basu, *"passage of the Bill would transform the Indian Constitution into a unitary Constitution instead of a federal Constitution and reduce all the States' powers into municipal powers."* On the other hand, Mr. Mehta warned that *"if the Centre truly wanted control on trade and commerce in States, then, over time, it would also want to have control over crop planning and cultivation."*

On a previous occasion, the Parliament brought the tobacco industry under a single unified law namely the Tobacco Board Act, 1975. However, the tobacco was continued to be listed as 'agricultural produce' by the Bihar APMC Act. The Constitution Bench of the Supreme Court of India in the year

2002 in *ITC Ltd. v. APMC & Ors.*,⁸ while upholding the constitutional validity of the Bihar APMC Act held that *"in those cases outside List III, one has to first examine if the subject matter was an exclusive entry under List I or List II, and only after determining this can one decide on the dominant legislation that would prevail"*.

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Member of NITI Aayog in the year 2017 in an article⁹ recommended to bring 'agriculture marketing' either in the Concurrent or in the Union List and implement a national-level model market act with all the required reforms. In 2018, a Committee on Doubling Farmers' income by 2022 appointed by the central government recommended inter alia to place 'agricultural marketing' in the Concurrent list.¹⁰ The National Commission on Farmers, chaired by Prof. MS Swaminathan, also recommended the insertion of 'agriculture' in the Concurrent List.¹¹ However, the Union Government on 27th March, 2018 informed Lok Sabha that it has no intention of inserting 'agricultural marketing' in the Concurrent List.¹²

CONCLUSION

From the above discussion, irrespective of the opposition during the enactment of the 3rd Constitutional Amendment Act, in the author's opinion it is highly unlikely and improbable that the three farm laws can be said to be out of the purview of Parliament. But, the continuous tussle between the centre and the state over the legislative powers indicates a need to relook and revise the seventh schedule. The revision also seems to be justified in the light of changing circumstances since the adoption of the Constitution. Though the Constitution has been amended 104 times and continuing during its lifetime of more than 70 years, the subject-matters contained in the 3 lists in seventh schedule have not been reviewed comprehensively yet. A subject that may be proper to be put under the domain of Union may not be relevant now or may be state and local governments are now better equipped to deal with it. The entries in the lists can be reviewed and revised by removing some outdated, redundant and obsolete ones; by adding emerging and new entries as per the prevailing requirements; and by appropriately placing the existing entries so as to ensure a better centre-state relations and a healthy functioning of the Constitution in the times to come.

6 https://eparlib.nic.in/bitstream/123456789/58262/1/jcb_01_1954_constitution_3rd_amendment_bill.pdf.

7 https://eparlib.nic.in/bitstream/123456789/55730/1/lcd_01_07_22-09-1954.pdf.

8 2002 (9) SCC 232.

9 <https://indianexpress.com/article/opinion/columns/indian-farmers-food-prices-inflation-indian-economy-food-for-reform-4898307/>.

10 <https://www.thehindubusinessline.com/economy/agri-business/agrimarketing-should-be-in-the-concurrent-list-dalwai-panel/article9821759.ece>.

11 <https://www.prsindia.org/report-summaries/swaminathan-report-national-commission-farmers>.

12 <https://indianexpress.com/article/explained/an-expert-explains-farm-acts-and-federalism-6622769/>.