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# ISSUE 1

## LEGISLATIVE BRIEF ON “THREE FARM LEGISLATIONS, 2020”: THE STORY SO FAR

### Introduction

The President of India in June, 2020 promulgated three Ordinances relating to agriculture and farming sector [commonly referred to as “farm Ordinances”] which were later replaced by the Parliament of India in September, 2020 into the following Acts [commonly referred to as “farm laws/legislations”]:

- 1 The Farmers’ Produce Trade and Commerce (Promotion & Facilitation) Act, 2020;
- 2 The Farmers’ (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020; and
- 3 The Essential Commodities (Amendment) Act, 2020.

The first two and the third abovementioned law though received the assent of the President of India in the year 2020 on September 24 and 26 respectively, deemed to have come into force at once from the previous date i.e, from June 5th, 2020 which was the date on which the Indian President promulgated farm Ordinances.

These laws have been legislated by the Parliament of India taking recourse to entry 33 of List III (Concurrent List) of Seventh Schedule of the Constitution of India. The subject matter under this entry was supposed to be temporary as per article 369 of the Constitution of India. But the Constitutional (Third Amendment) Act, 1954 converted this temporary responsibility into a permanent one by substituting this 33rd entry.

### 1 The Farmers’ Produce Trade and Commerce (Promotion & Facilitation) Act, 2020

- This law allowed the farmers to sell their produce beyond the markets set up by the Agriculture Produce Market Committees (generally referred to as ‘APMCs yards/mandis/markets’) constituted and established by the respective state governments and also beyond the markets so specified and notified by the respective state governments under any other law. This paved the way for barrier free inter-state and intra-state trade in agriculture produce.
- As per section 3 of the Act, any farmer or trader or electronic trading and transaction platform shall have

the freedom to carry on the trade and commerce in a trade area [refer clause (n) of section 2] i.e., at any place of production, collection and aggregation of farmer's produce including at farm gates, factory premises, warehouses, silos and cold storages.

- Section 5 of the Act also allows electronic trading of produce by the scheduled farmers in a specified trade area. Companies, partnership firms or registered societies {having permanent account number (PAN) under the Income Tax Act, 1961 or any other document as the Central Government notifies} and even a farmer produce organisation or an agriculture co-operative society can set up and operate an electronic trading and transaction platform in order to facilitate inter-state and intra-state trading.
  - As per section 6 of the Act, if any farmer, trader, or electronic trading and transaction platform wishes to trade and commerce in scheduled farmers’ produce in a trade area then the respective state government cannot impose any market fee, cess or levy under any state law.
  - Chapter III of the Act has created a 3-tier dispute settlement mechanism in case if any dispute arises. They are from bottom to top are the Conciliation Board, Sub-Divisional Magistrate and Appellate Authority.
- ### 2 The Farmers’ (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020
- This law empowers farmers by way of promotion of ‘contract farming’ by creating a national framework where a farmer can enter into an enforceable agreement with a prospective buyer even before the sowing season. However, the law prescribes a certain time frame to be followed which is that the minimum period will be one crop season or one production cycle of livestock and whereas the maximum period is half a decade unless the production cycle goes beyond this maximum limit.
  - The Act protects farmers by prescribing that contract must mention the selling price and also the price determination process. Further, if in case prices are subject



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- Chapter III of this Act has also created a dispute settlement mechanism similar to one created in the first farm law.

### 3 The Essential Commodities (Amendment) Act, 2020

- This Amendment Act amended section 3 of the 1955 Essential Commodities Act which essentially in the interest of general public gives power to the Central Government to control production, supply, distribution, etcetera of certain essential commodities.
- The Amendment Act authorizes Central Government to regulate the supply of cereals, pulses, potato onions, edible oilseeds and oils only under extraordinary circumstances. These extraordinary circumstances have been elaborated to include war, famine, natural calamity of grave nature or if there is extraordinary rise in prices.
- This law further provides that a regulating stock limit order must be based on a fair price and only if there is the retail price of horticulture produce reaches two hundred percent or of non-perishable agriculture foodstuffs reaches one hundred and fifty percent. For determining the benchmark, the lower of the prices prevailing immediately preceding 12 months or average retail price of last 5 years shall be considered.
- The Amendment Act further makes it clear that such limits won't be applicable to any order relating Public Distribution System (PDS) or to Targeted PDS and also to a processor or value chain participant of any agricultural produce, if the stock limit of such person does not exceed the overall ceiling of installed capacity of processing, or the demand for export in case of an exporter.

#### Protests and Involvement of the apex court

- Soon after the enactment of the three farm Ordinances, there were protests especially in the Northern part of India. The protests are still continuing.

- Within few days of the replacement of the laws by the Parliament of India, the Constitutional validity of the three farm laws were challenged before the Supreme Court of India. [Refer Rakesh Vaishnav and Others versus Union of India and Others, Writ Petition (Civil) No. 1118 of 2020.]

- There was another petition, which was filed to support the three farm legislations since according to the petition these laws are constitutionally valid. However, in the author's opinion there is no requirement of filing of any petition to support any law for the reason that there is not only a presumption but a strong presumption exists in favour of the validity of a law. That's why there exists a heavy burden on the person or whoever challenges the Constitutional validity of the same to prove otherwise.

- On January 12, 2021, the full bench (3-judges bench) of the Supreme Court of India passed an interim order whereby the implementation of the three farm legislations has been stayed until further orders and a four-member committee has been constituted to look into the concerns and grievances of the farmers and to submit a report so that an amicable solution can be reached.

#### Concerns and Conclusion

Concerns have been raised after the enactment of these laws. Some say that these laws are an attempt to slowly eliminate APMCs from the trade and commerce of agriculture produce and by allowing the farmers to freely trade in any trade area the central government want to corporatize the agriculture sector. Further, the amendment in the Essential Commodities Act, some argue, might give rise to hoarding and stock piling of essential goods like pulses by large traders. It should be kept in mind that in many States, there is no APMC. The other side of the coin is that the Acts, will allow the freedom to farmers to trade and choose, in the same manner as we witnessed in liberalization during 1991 – 92. These legislations are constitutional and valid until proven otherwise.