DE JURE NEXUS LAW JOURNAL

Author:

Pratibha Vyas

Lloyd Law College, Greater Noida.

LL.B. (3 Years), 2nd Year.

FARM BILLS- ONE NATION, ONE MARKET

INTRODUCTION

Our world started from the day the agricultural revolution started. Like one must have hear, "If we ate today….thanks to a farmer who toiled in the field". An industry that feeds us is an industry worth fighting for. Among the three sectors, India's GDP is largely dependent on our primary industry. At one time, India use to take 33% of GDP around the world. In agricultural sector more than 70% of the population is engaged in agricultural activities but it is also painful to state that a hand that feeds the nation is caught in the fetters of starvation. In last few days, protest by farmers in the parts of the country can be observed. These are due to the introduction of the new bills without much debate in the Parliament. These three new bills are The Farmers Produce Trade & Commerce (Promotion & Facilitation) Bill, 2020, The Farmers (Empowerment & Protection) Agreement on Price Assurance & Farm Services Bill, 2020 and The Essential Commodities Act Bill 2020 in the lower house by the Union Minister of Agriculture & Farmers' Welfare, Rural Development & Panchayati Raj, Shri Narendra Singh Tomar on 14thSeptember, 2020 to replace the ordinances promulgated on 5th June, 2020. The same was passed by the Rajya Sabha on 20thSeptember, 2020 and according to the gazette notification President gave assent on 27th September, 2020.

HISTORICAL BACKGROUND

After more than 600 years of colonial rule, India received its independence from the British on August 15, 1947. A large section of the population, about three-fourths, was dependent on agriculture for employment and for the food and fiber consumed by farming families and landlords.

Agriculture in India was based mainly on feudal land relations where a majority of the population lived in rural areas, contended with low productivity, and had only primitive technology. In those days, farmers use to sell their produce directly to the consumers but due to zamindari system and many more shackles farmers use to take loan from money lenders, on which these money lenders use to charge a very high rate of interest and when the farmers were not able to pay the interest then the money lenders used to buy their farm produce at a very low price and then for the next production, farmers have to take loans again from the money lenders and this way this process became like a vicious cycle that kept on repeating and because of which the farmers were not able to come out of the cycle and were never sustainable. We all want the farmers to be protected from getting exploited so therefore, the model which we want right now was the same model which was wanted in 1947.

In the early 1950s, the government saw that the farmers are been exploited a lot and then they made an effort to address the situation by enacting The Essential Commodities Act. Then, in the 1970s, the Government came up with the Agricultural Produce Market (Regulation) Act, through which the Agriculture Produce Marketing Committees (APMCs) were formed to ensure remunerative prices for farmers. The whole geographical area of the State is divided into smaller market areas wherein the markets are managed by the Market Committees constituted by the State Governments. Once a particular area is declared a market area and falls under the jurisdiction of a Market Committee, then no person or an agency were allowed to carry on wholesale marketing activities. In layman's language, this act says that farmers can neither sell their products directly to the consumers nor anyone can directly purchase from them. All the sale will be done through Mandis (markets) which were established through the APMC Act.

The present model of APMC Act explains that every state's government has its own APMC where the state divides the Mandis (markets) according to their area and each area has its specific Mandi (market). Farmers sell their produce to licensed middlemen at the APMC Mandis. These middlemen resell the same produce to wholesalers at the APMC market in urban areas. At these urban APMC markets, the produce passes on from the retailers and then to the end consumers. This system of selling and purchasing things from the specific Mandi is mandatory for the middlemen and farmers. The products that are sold through APMC is done by auction, which is divided into two parts, one is Minimum Support Price system, meaning minimum selling price, MSP is the starting price from where the auction starts and this is decided by the Government of India. MSP is not for all the crops, there are 22 such crops for which Government of India decides minimum selling price and another one apart from those 22 crops, are sold on Price Discovery System i.e. on the basis of demand and supply of that produce in the market the price is discovered. So therefore, the products that are sold in APMC is done through a supply chain. The APMC Act have created a long chain or a supply chain of middlemen. That supply chain includes middlemen like commission agent also known as arthiyas, traders who negotiates and a price is being discovered, transaction agent who conveys farmers at what rate the product is being sold and for which he charges at least 3% market fees from the farmers. The time the consumers receive the product, there is nearly 50% difference of the actual cost of the product and at least 25% of the total produce gets wasted. In the absence of market information farmers do not get remunerative prices and the middlemen get the major share in profit. Thus, this leaves a huge gap between the wholesale and retail prices with middlemen consuming the best of the pie while farmers get not even half of what they expected.

As the states are divided into different geographical territories and each area having mandi for the farmers and traders and the produce sold on the basis of auction might be a positive factor in theoretical aspect but we can see that this APMC Act has flaws too, firstly, taxes levied on farmers to sell in Mandis, secondly, monopoly and cartelization of agents and hoarding practices, and lastly, the number of middlemen between the farmers and the consumers. Basically, when this act was introduced it was for the protection of the farmers from all the moneylenders and middle men’s exploitation but in changing times this act became the reason for the exploitation of farmers. Monopoly is not bad for business only but for the government and markets too. Even if we don’t think to bring or accept the new farm bill still there was a need to rectify APMC Act since long time. Therefore, this new system is trying to eliminate this middlemen process and many other aspects.

BILL AND ITS MAKING

A bill is a draft statute which becomes law after it is passed by both the houses of Parliament and assented by the President. All legislature proposals are brought before Parliament in the forms of bills. The introduction of the bill is based on the concept of “One India, One Agricultural Market”. It aims at opening the gates for farmers to the corporate world to create additional trading opportunities beyond the APMC market yards to help farmers to get remunerative prices due to additional competition. While, on the other hand the opposition's view is that the bills passed challenges the three pillars of the food security system i.e. Minimum Support Price, Public Procurement and Public Distribution System. And argued that the bills are 'anti-farmer' as farmers are being handed over to the capitalists who will encroach them and exploit them rather than empower. Further, public's agitation in the states of Punjab and Haryana; a minister from the Shiromani Akali Dal, a partner of the NDA government, quit as an act of protest against these measures.

Does the Centre have any power to make a laws for the Agricultural sector? As per the 7th Schedule in List I, the Centre can make laws, in List II there are State subject matters on which State can make laws and List III is Concurrent list in which both the Centre and State can make laws. So agriculture comes in Entry 14 of List II[1] thus, matters relating to agriculture comes under the state so state can make laws for it but, if we look into the Entry 33 of List III[2] then it reduces the power of state to make laws for agriculture and also using Entry 33 Centre passed the Essential Commodities Act, which was also a law. Therefore, the Centre has the power to make laws for agriculture.

THE TRIOS

The central government promulgated three Ordinances on 5th June, 2020, which further became Bills, (i) the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, (ii) the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, and (iii) the Essential Commodities (Amendment) Act, 2020. They collectively seek to (i) facilitate barrier-free trade of farmers' produce outside the markets notified under the various state APMC laws, (ii) define a framework for contract farming, and (iii) impose stock limits on agricultural produce only if there is a sharp increase in retail prices. These three Bills together aim

[1] Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

[2] Trade and commerce in, and the production, supply and distribution of- the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products, foodstuffs, including edible oilseeds and oils, cattle fodder, including oilcakes and other concentrates, raw cotton, whether ginned or unginned, and cotton seed and raw jute.

to increase opportunities for farmers to enter long term sale contracts, increase availability of buyers, and permits buyers to purchase farm produce in bulk.

The first legislation-the Farmers' Produce Trade and Commerce Act provides for sale and purchase of agricultural commodities beyond the boundaries of the market yard without payment of market fee. India has phenomenal potential in agriculture, but archaic laws and regulations have held back investments and depressed productivity. The objects of this act are:-

(1) Freedom of choice of sale and purchase by ending the monopoly of traders.
(2) To yield better returns to farmers and to raise income.
(3) Farm produce can move freely from surplus to deficit regions.
(4) To create national market.
(5) Consumer get better and cheaper products.
(6) A separate dispute resolution mechanism for the farmers to avoid pending court litigation,

The provision of the Act states that:-

(1) It will create an ecosystem where the farmers and traders will enjoy freedom of choice of sale and purchase of agri-produce.
(2) The farmers will not be charged any cess or levy for sale of their produce and will not have to bear transport costs.
(3) As per the State Agricultural Produce Marketing legislations it will also promote barrier-free inter-trade and intra-trade and commerce outside the physical premises of markets,
(4) Farmers will be able to engage in direct marketing thereby eliminating intermediaries resulting in full realization of price.
(5) Other than Mandis (markets) farmers have freedom to do trading at farm gate, cold storage, warehouse, processing units, etc.
(6) The act also proposes an electronic trading transaction platform and the following entities may establish and operate such platforms: (i) companies, partnership firms, or registered societies, having permanent account number under the Income Tax Act, 1961 or any other document notified by the central government, and (ii) a farmer producer organization or agricultural cooperative society.

The act also states the penalties on the contravention of the provisions of section 4 or the rules made which shall not be less than ₹25000/- but which may extend up to ₹5,00,000/-, and where the contravention still continues, further penalty not exceeding ₹5000/- for each day after the first day and if any person, who owns, controls or operates an electronic trading and transaction platform, contravenes the provisions of sections 5 and 7 or the rules made shall be liable for penalty which shall not be less than ₹50,000/- but which may extend up to ₹10,00,000/- and where the contravention is a continuing one, further penalty not exceeding ₹10,000/- for each day after the first day during which the contravention continues.

Doubts regarding the act are:-

(1) Will it put an end to the Minimum Support Price? No, as it is allegedly stated that the procurement at MSP will continue, farmers can sell their product at MSP rates,
(2) It will lead to the destruction of the Mandi system. But Mandi will not stop functioning, trading will continue as before. Under the new system, farmers will have the option to sell their produce at other places in addition to that of Mandis.
(3) What will be the future of government electronic trading portal like e-NAM, then the e-NAM trading system will also continue in the mandis.
(4) Loss of revenue to the states as the farmers will sell their agricultural produce beyond the APMC markets. But, if farmers are explained well regarding the selling of their produce and how the pricing is done then there would be no problem.

The second legislation-Farmers Agreement on Price Assurance and Farm Services Act, provides a broad framework for facilitating contract farming. An elaborate mechanism for dispute resolution. Earlier, the farmers had to take their produce to the APMCs. Most farmers would agree that the functioning of the Mandis were opaque, politicized and often controlled by cartels, the attempt to reform the functioning of the Mandis is not new and has been in process for last two decades, starting from 2001 when a report was submitted by an expert committee on agricultural marketing. Since then, three different models of APMC Act were submitted by the previous governments in 2003, 2007 and 2013 and in 2017 by the current government, none of which led to a proper system for farmers.

The provision of the Act states that:-

(1) This new legislation will empower farmers for engaging with processors, wholesalers, aggregates, large retailers, exporters etc., on a level playing field without any fear of exploitation.
(2) It will transfer the risk of market unpredictability from the farmer to the sponsor and also enable the farmer to access modern technology and better inputs. It will reduce the cost of marketing and improve income of farmers.
(3) Effective dispute resolution mechanism has been provided for with clear time lines for redressal.
(4) Sale, lease or mortgage of farmers' land is totally prohibited and farmers' land is also protected against any recovery.
(5) This legislation will act as a catalyst in order to attract private sector investment for building supply chains for Indian farm produce to national and global markets.

Doubts regarding the Act are:-

(1) Under contract farming, farmers will be under pressure and will face problem to determine the minimum support price but, full power will be given to the farmers in the contract to fix the sale price of his choice for the produce and within maximum 3 days, they will receive the payment.
(2) How farmers will be able to practice contract farming? Throughout the country around 10,000 Farmer Produce Organizations are being formed. They will bring together small farmers and ensure remunerative pricing for farm produce.
(3) The new system will be a problem for farmers. But, when the contract is has been signed then the farmer will not have to seek out traders.
(4) In future if there is any dispute then the companies will be having an advantage but as per the dispute settlement there is no need to go to the court repeatedly because there will be a local dispute redressal mechanism.

And the third legislation-The Essential Commodities (Amendment) Act which was enacted in 1955 when the country faced an acute shortage on several commodities, especially food items. The Act provides that the Central government may regulate the supply of certain food items like cereals, pulses, potatoes, onions, edible oilseeds, and oils other than fertilizers and petroleum products only under extraordinary circumstances like war, famine, natural calamity of grave nature and extraordinary price rise. The main object is to help both farmers and consumers to bring price stability and to encourage private sector investment in agricultural sector. The Act also states that imposition of any stock limit on agricultural produce must be based on price rise. A stock limit may be imposed only if there is firstly, 100% increase in retail price of horticultural produce; and secondly, 50% increase in the retail price of non-perishable agricultural food items. The increase will be calculated over the price prevailing immediately preceding twelve months, or the average retail price of the last five years, whichever is lower. It was observed that the dominant purpose of price fixation was to ensure availability of essential commodities to consumers at fair price. The essential commodities which is enlisted under the 9th Schedule of the India Constitution, that means it is not outside the scope of Judicial Review. Farmers may approach the Supreme Court if they feel that laws such as the Essential Commodities Act violates their fundament rights under Article 14, 19, 21 and 32 of the Indian Constitution.

The passing of the bills is a step towards providing a bigger platform to the farmers to get the desired price for their agricultural produce. It will bring revolutionary changes in the lives of the farmers. The second legislation which is a framework for contract farming should be left in the hands of the States rather than Central government taking responsibility as it's a state matter and in many states this framework already exist like Maharashtra, Karnataka, Tamil Nadu and etc. for instance, the introduction and scaling up of oil palm cultivation in the states of Andhra Pradesh and Telangana was done under a well-thought-out contract farming legislation in the erstwhile state of Andhra Pradesh. For successful implementation of contract farming, supervision and arbitration by the state government is essential.

PROTEST BY OUR FARMERS

In 2018, as per the National Crime Report of Bureau the number of suicides were 1,34,516 out of which 10,350 farmers died i.e. nearly 7.7% which was reported. As we can see, in the last few days, farmers have been protesting widely in the states of Punjab and Haryana. On 25th September, 2020 farmers' organizations across the country gave a call for "bandh" to protest against the three bills passed by Parliament. The reasons why the farmers are on the street fighting for the restoration of the primacy of the Mandis in Agricultural Trade primarily is because these mandis are an essential part of the ecosystem. The farmers might agree that the functioning of mandis are inefficient, opaque, politicized and often controlled by cartels but, they also share a symbolic relationship with the middlemen and the Mandis extending beyond matters of transaction in agricultural produce. Through APMC the state of Punjab was earning nearly around 8% of profit. As per the Farm Commodity 2020, the contribution of Haryana is 850 crore while Punjab is at 1750 crore, this number of contribution would be used for the development of Kisan (farmers), road and etc. Another reason for the protest is that most farmers realize that the reform is not delivering on the promise of freedom to farmers but instead is helping private capital to purchase agricultural produce at cheaper prices and without any regulation or oversight by the government. Also, the Bill that is introduced does not mention anything relating to the MSP (Minimum Support Price), which is the main focus for the farmers. The anger is not only with the farmers' organizations but also with the state government and allies with whom the discussion was not taken into account.

Recently, current government hiked the Minimum Support Price of wheat and five other rabi crops. As per the tweet of our Prime Minister Shri Narendra Modi- "It is our great privilege to work for the welfare of our farmers. In line with our ethos of taking farmer-friendly measures, the Cabinet has taken another historic decision to raise MSP. Crores of farmers will benefit from this". Also further stated that higher MSP will empower farmers and contribute to doubling their income. Both our Prime Minister and the Minister of Agriculture & Farmers Welfare, Minister of Rural Development and Minister of Food Processing Industries stated that APMC and MSP will continue even after bringing the new system.

CONCLUSION

It can be concluded that the farmers need not fear the new laws and instead adapt to the changes. The new bills which is introduced says about to create a new ecosystem, a parallel system to that of existing system. Yes, in theory it might seems easy but it all depends upon how it is executed. However, passing of the law won't be enough. The success will depend on its implementation, continuous monitoring and timely actions taken whenever required. The truth is that every government whether previous, current or the government of future, people of India wants best for farmers as they play an important role for our country. The procurement of MSP and Mandis established under the state laws will continue to operate. It will empower the farmers and foster their growth and development in the country reshaping the Indian economy. The discussion on farm bills has caught the nation's eyes towards farmer reform and welfare so we should not discuss on the farm bill only but we should also discuss on the education of farmers and what necessary steps are been taken by the state government. Our farmers are the soul of the nation and their growth and upliftment is the foremost duty to be taken care by us.