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Farm Laws: Unconstitutional and Colourable Exercise by the Parliament

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ABSTRACT

It is a very general understanding that “anything is not perfect”, so applies to the Indian Constitution or any Constitution. But, the worst part is that the Central Government to use these loop holes in order to undertake colourable exercises to implement an unconstitutional(broadly) statute like that of the Farm Laws. From the Preamble, through the Fundamental Rights(the golden triangle), DPSPs to all the way violating the principles of Natural Justice these acts have caused the colossal ignorance of knowledge of law and what perverse sense of justice in the general public. From the economic viewpoint also they are discriminatory for the farmers and other affiliated parties. The dominance of Central Government over the State Government and encroachment of the agricultural domain which is broadly a State Subject. In the Research Paper given the very details and interpretation of various provisions of the Constitution and proper litmus test in order to evaluate the constitutionality as well as other related issues with the acts. The epilogue will be able to satisfy the readers that “the Constitution is a settled conspiracy”.

Keywords: *Unconstitutionality, Colourable exercise.*

I. AN OVERVIEW OF THE HISTORY OF AGRICULTURE SINCE INDEPENDENCE AND CHALLENGES FACED

India is and has been an agrarian economy. After India gained Independence in 1947, farmers used to sell their products direct to the consumers. But due to prevailing system of Zamidars or money lenders, farmers were trapped in perpetual debt. Farmers need to buy seeds, fertilizers and other things required for growing a crop, for buying all these things you need money so farmers took loans from Zamidars or money lenders who used to charge a very high interest rate on the principal amount. Farmers were unable to pay such a hefty amount and in such cases to get their money back money lenders or the Zamidars used to buy the whole produce of the farmers but, they paid very less amount to farmers because farmers did not have the bargaining

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power. Now to again sow their fields farmers required money so this cycle continued, and farmers were always in debt.

This process was very exploitative so to help the farmers and end this system government of India introduced APMC (Agriculture Produce Market Committee) Act. It was introduced in 1960's at the very same time when green revolution started in India many experts believe that in the major of green revolution APMC Act played a major role. APMCs set up Mandis or Markets across India where farmer's produce was sold. There are around 7000 APMCs in India at present. Now, the process of selling the produce is that after harvesting crops are brought to the Mandis or Markets where they sell the produce through auctioning or price discovery. Whom are the farmers selling the crops? Not to the government but the middlemen or Arhatiyas. Middlemen are people between the farmer and the retailer or big traders. For example, farmers sell their vegetables to the middlemen and then the vegetable vendor buys vegetable from the middleman, vegetable vendor will not buy directly from the farmers. Government gives license to these Middlemen; shops, storage facilities etc. are provided to them in APMC markets. Many people work in these APMCs, there is storage of grains, so it requires laborers, accountants so overall it is a self-thriving ecosystem. One thing which should be noted here is these APMC markets are regulated by state governments, a tax is charged on each transaction so in a way government knows at price produce is being sold.

Now what about the produce that are not bought by the middlemen in these markets? This is being bought by the government at MSP (Minimum Support Price). MSP is constant throughout the country. MSP also ensured that produce bought by the middlemen were not below a certain price. When everything is so good are farmers happy? According to National Crime Bureau report 2018, 1,34,560 suicides were reported in India out of which 10,350 were farmers remember this was total number of reported cases. This system was good seeing 1960's but with time we need to evolve similarly, not much was done to APMCs and some problems popped up. Middlemen started exploiting farmers they formed cartels or an understanding among themselves and started buying the produce at MSP only and sold to traders at a high rate. For example, MSP for onion is Rs.8.5 per kg (data as of February 06, 2019) but we buy onions at Rs 35 – 80 per kg depending on state. In a way we can say Minimum Support Price became Maximum Selling Price. Voice arose from time to time to remove these defects and in response government brought the three Acts in 2020.

By the facts and data given above, we can get an overview of the challenges faced by the general farmers broadly and small farmers (based on the economic and land-holding status) specifically. This shows the exploitation and helplessness of the farmers in a country which

proudly unfurl the flag of SOCIALISTIC SECULAR DEMOCRATIC REPUBLIC and of FATHERLY and promises to secure to all its citizens JUSTICE (social, economical and political) and EQUALITY of status and of opportunity. But unfortunately, the kind of statutes passed and the procedure by which these are passed raises a big question mark to the first page of the fundamental law of the land that is the PREAMBLE of THE CONSTITUTION OF INDIA. Nevertheless a number of provisions thereto are ignored while drafting these three laws which are discussed in later pages.

II. WHAT ARE THE STATUTES AND THE RESPECTIVE PROVISIONS RAISING ISSUES

Under this heading all the concerned sections and objectives of the laws are given which will be taken as reference further and judged on the scale of constitutionality (in depth), natural justice and prudence.

(A) The Farmers (Empowerment And Protection) Agreement On Price Assurance And Farm Services Act, 2020²

This is the first act and starts with the aim that says “an act to provide for the national framework on farming agreements that **protects** and **empowers** farmers to engage with agri-business firms, processors, wholesalers, exporters or large retailers for farm services and sale of future farming produce at a manually agreed remunerative price framework in a **fair and transparent** manner and far matters connected therewith or incidental thereto”

Here the main aim can be inferred from – **protects, empowers farmers, and a fair and transparent manner.**

Now let us see the provisions which in some cases explicitly and implicitly centralise the power in the hands of the central government and the State Government is given nominal powers:

- **Sec3(4)** For the purpose of facilitating farmers to enter into written agreements, the Central Government may issue necessary guidelines along with model farming agreements, in such manner, as deem fit.
- **Sec6(4)** The State Government may prescribe the mode and manner in which payment shall be made to the farmers under sub-section (3)
- **Sec14(9)** The manner and procedure for filing a petition or an application before the Sub-division authority and an appeal before the Appellant authority shall be such as may be prescribed by the Central Government.

² MINISTRY OF LAW AND JUSTICE New Delhi, the 27th September, 2020/Asvina 5, 1942 (Saka) The following Act of Parliament received the assent of the President on the 24th September, 2020 and is hereby published for general information.

- **Sec16** The Central Government may, from time to time, give such directions, as it may consider necessary, to the State Governments for effective implementation of the provisions of this act and the State Government shall comply with such directions.
- **Sec22(1)** The Central Government may, by notification in the official gazette, make rules for carrying out the provisions of this act.
- **Sec23(1)** The State Government may, by notification in the official gazette, make rules carrying out provisions of this act.
- **Sec24(1)** If any difficulty arises in the giving effect to the provisions of this act, the Central government may, by order published in the official gazette, make such provisions, not inconsistent with the provision of this act, as may appear it to be necessary for removing the difficulty.

Now let us look at some other contradictory provisions, the contradiction of which shall be discussed in the later chapters:

- **Sec5** The price to be paid for the purchase of farming produce may be determined and mentioned in the farming agreement itself.
- **Sec7(2)** Notwithstanding anything contained in the Essential Commodities Act, 1955 or in any control order issued thereunder or in any other law for the time being in force, any obligation related to stock limit shall not be applicable to such quantities of farming produce and are purchased under a farming agreement entered into in accordance with the provisions of this act.
- **Sec3(1)** The farmer may enter into a written farming agreement in respect of any farming produce and such agreement may provide for-
 - The terms and conditions for supply of such produce, including the time of supply, quantity, grade, standard, price and such other matters; and
 - The terms related to supply of farm services.
- **Sec13(1)** Every farming agreement shall explicitly provide for a conciliation process and formation of a conciliation board consisting of representatives of parties to the agreement.
- **Sec14(1)** Where, the farming agreement does not provide for conciliation process as required under sub-section (1) of section 13, or the farming agreement fails to settle their dispute under that section within a period of thirty days, then, any party may approach the concerned Sub-Divisional Magistrate for deciding the dispute under farming agreements.

- **Sec14(2)(b)** the parties failed to settle their dispute through conciliation process, de ide the dispute in summary manner within thirty days from the date of receipt of such dispute, after giving the parties a reasonable opportunity of being heard and pass an order fit, subject to the following conditions –
 - Where the sponsor fails to make payment of the amount due to the farmer, such penalty may extend to one and a half times of the amount due.
 - Where the order is against the farmer for recovery of the amount due to the sponsor on account of any advance payment or cost of inputs, as per terms of farming agreements, such amount shall not exceed the actual cost incurred by the sponsor.
 - Where the farming agreement in dispute is in contravention of the provisions of this act, or default by the farmer is due to force majeure, then, no order of recovery of amount shall be passed against the farmer.
- **Sec19** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any dispute which a Sub-Divisional Authority or the Appellant Authority is empowered by or under this act to decide and no injunction shall be granted by any court by any court or other authority in respect of action take or to be taken in pursuance of any power conferred by or under this act or any rules made thereunder.

(B) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020³

An act to provide for the creation of an ecosystem where the farmers and traders enjoy the freedom of choice relation to sale and purchase of farmers' produce which facilitates remunerative prices through competitive alternative produce channels; to promote efficient, transparent and barrier-free inter-state and intra-state trade and commerce of farmers' produce outside the physical premise of market or deemed markets notified under various State agricultural product market legislations; to provide a facilitative framework for electronic trading and for matters connected therewith or incidental thereto.

Here the main aim can be inferred from – farmers(not specified), freedom of choice, efficient and transparent trade and commerce.

Now let us see the provisions which in some cases explicitly and implicitly centralise the power in the hands of the central government and the State Government is given nominal powers:

³ MINISTRY OF LAW AND JUSTICE New Delhi, the 27th September, 2020/Asvina 5, 1942 (Saka) The following Act of Parliament received the assent of the President on the 24th September, 2020 and is hereby published for general information.

- **Sec2(i)** “prescribed” means prescribed by the rules made by the Central Government under this Act;
- **Sec4(3)** Every trader who transacts with farmers shall make payment for the traded scheduled farmers’ produce on the same day or within the maximum three working days if procedurally so required subject to the condition that the receipt of delivery mentioning the due payment amount shall be given to the farmer on the same day :
- Provided that the Central Government may prescribe a different procedure of payment by farmer produce organisation or agriculture co-operative society, by whatever name called, inked with the receipt of payment from the buyers.
- **Sec10** Any person aggrieved by an order under sec9 may, prefer an appeal within sixty days from the date of such order, to an officer not below the rank of Joint Secretary to the Government Of India to be nominated by the Central Government for this purpose.
- **Sec12** The Central government may, for carrying out the provisions of this act, give such instructions, directions, orders or issue guidelines as it may deem necessary to an authority or an officer subordinate to the Central government, any State government or any authority or officer subordinate to a State Government, an electronic trading and transaction platform or to any person or persons owing or operating an electronic trading and transaction platform, or a trader or class of traders.
- **Sec17** The Central Government may, by notification, make rules for carrying out the provisions of this act.
- **(2)** In particular and without prejudice to the generality of the foreign power, such rules may provide for all or any of the following matters, namely—
- **(g)** any other matter which is to be or may be prescribed.
- **Sec19(1)** If any difficulty arises in giving effect to the provisions of this act, the Central Government may, by order published in the official gazette, make such provisions not inconsistent with the provisions of this act as may appear to it be necessary for removing the difficulty: Provided that no order shall be made under this section after the expiry of three years from the date of commencement of this act.
- **Sec4(1)** Any trader may engage in the inter-state trade and intra-state trade of scheduled farmers’ produce with a farmer or another trader in a trade area: Provided that no trader, except the farmer producer organisation or agricultural cooperative society, shall trade in any scheduled farmers’ produce unless such a trader has a permanent account number allotted under the Income-tax Act, 1961 or such other document as may be notified by the Central Government.

- Now let us look at some other contradictory provisions, the contradiction of which shall be discussed in the later chapters:
- **Sec6** No market fees or cess or levy, by whatever name called, under any state APMC act or any other State Law, shall be levied on any farmer or trader or electronic trading and transaction platform for trade and commerce in scheduled farmers' produce in a trade area.
- **Sec14** The provisions of this act shall have effect, notwithstanding anything inconsistent therewith contained in any State APMC Act or any other law for time being in force or in any instrument having effect by virtue of any Law for the time being in force.
- **Sec8(1)** In case of any dispute arising out of a transaction between the farmers and the traders under section 4, the parties may seek a mutually acceptable solution through conciliation by filing an application to the Sub-Divisional Magistrate who shall refer such dispute to the conciliation board to be appointed by him for facilitating the binding settlement of the dispute.

The aforementioned sections are majorly the concerned provisions which are in contradiction of various Articles of THE CONSTITUTION OF INDIA.

III. LEGISLATIVE POWERS OF CENTRE V. STATE ON MAKING FARM LAWS

The Indian Constitution contains a very elaborate scheme for distribution of powers and functions between Centre and State. the framers of the Indian Constitution took note of the development on the area of Federal-State allocation of powers in other federations. Under part xi of The Indian Constitution Article 246. Subject matter of laws made by parliament and by Legislatures of States ; talks about the separation of domain and division of functions and subject matter on which the Centre and State have the power to make laws respectively.

Article 246(1) confers on parliament and 'exclusive power' to make laws with respect to any of the matters and the Union List (list I of the seventh schedule). The entries in this list are such as need a uniform law for the whole country. The State are not entitled to make laws in this area. article 246(1) opens with the words "notwithstanding anything in clause (2) and (3)". There are 97 subjects covered under Union List.

Article 246(3) confers an exclusive power on state to make laws with respect to the matters enumerated in the State List (list II in the seventh schedule). these are matters which admit of local variations and, from an administrative point of view, are best handled at the state level and, therefore the centre is debarred from legislating with respect to these matters. It opens

with the words “subject to clause (1) and (2).” There are 66 subjects covered under State List. A unique feature of the Indian scheme of division of powers is the existence of a large concurrent list for the Centre and State. Article 246(2) confers a concurrent power of legislation of both the Centre and State with respect to the matter enumerated in the Concurrent List (list III of the seventh schedule).there are 47 subjects in this list.

Now, there may be certain situations in which there might be an overlapping or subjects or the interests on the basis of which both the Centre as well as State have the power to pass a legislation. In *Prof. Yashpal v. State of Chhattisgarh (2005) 5 SSC 420*.⁴ The Supreme court held that in that condition when there is an entry in general terms in list II and part of it in List I, the entry in List I takes effect notwithstanding the entry in List II.

Let us look at the entries concerned with these Farms Laws and try to figure out that what was the actual intent of the framers of the Constitution and does Central Government has power to draft legislation in the agricultural sector or not!

(A) Union List⁵

- Entry82 – Taxes on income other than agricultural income.
- Entry86 – Taxes on the capital value of the assets, exclusive of the agricultural land, of individual and companies; taxes on the capital of companies.
- Entry87 – Estate duty in respect of property other than agricultural land.
- Entry88 – Duty in respect of succession of property other than agricultural land.

(B) State List⁶

- Entry14 – Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
- Entry18 – Land, that is to say, right in or over land, land tenures including the relation of land lord and tenants, and the collection of rents; transfer and alienation of agricultural land; land improvements and land loans, colonization.
- Entry30 – Money lending and money lenders; relief of agricultural indebtedness.
- Entry46 – Taxes on agricultural incomes.
- Entry47 – Duties in respect of succession of agricultural land.
- Entry48 – Estate duty in respect of agricultural land.

⁴ <http://ugcbeta.ac.in>

⁵ The Constitution Of India

⁶ The Constitution Of India

(C) Concurrent List⁷

- Entry6 – Transfer of property other than agricultural land; registration of deed and document.
- Entry7 - Contracts including partnerships, agency, contracts of carriage and other special forms of contract, but not including contracts on agricultural land.
- Entry33 – Trade and commerce in, and the production, supply and distribution of:
 - i. The product of any industry where the control of such industry by the union is declared by the Parliament by law to be expedient in the public interest, and imported goods of the same kind and such product.
 - ii. Foodstuffs, including edible oilseeds and oils;
 - iii. Cattle fodder, including oilcakes and other concentrates;
 - iv. Raw cotton, whether ginned or unginned, cotton seeds;
 - v. Raw jute.

IV. CONCEPT OF PITH AND SUBSTANCE

Pith denotes the 'essence of something' or the 'true nature', while **substance** states 'the most significant or essential part of something'. So, if there are certain provisions in the Union and the State list overlapping each other then the pith and substance of the subject matter must be taken into consideration and considerable steps must be taken accordingly. In *Vijay Kumar Sharma & Ors. Etc vs State Of Karnataka & Ors. Etc on 27 February, 1990* the Supreme court held that the concept of pith and substance must be applied to the concurrent list also.

(A) Comparing all three lists and concerned provisions thereto

Firstly, a large number of powers concerning to draft statute or other executive functions relating to agriculture are given in the hands of the State Government. And it seems to be the intention of the founding fathers of the Constitution that agriculture is broadly a State subject and only the State Government must reside with the power to make laws to a larger extent when we talk about Agriculture.

Secondly, entry 82, 87 and 88 of the Union List clearly exempts the agricultural subjects to be made laws on.

Thirdly, entry 14 and 30 of the State List is not subject to any of the entries of the Union List.

Fourthly, while referring to Entry 86 of Union list and Entry46 of State List, it is implied that taxes on agricultural incomes in the State subject but it has been encroached by the Central

⁷ The Constitution Of India

Government by taking the superseding powers over the State powers to regulate taxes under section 24(1) of the farmer (empowerment and protection) agreement on price assurance and farm services act, 2020 and under section 12 and 17 of the farmers' produce trade and commerce (promotion and facilitation) act, 2020.

Fifthly, the most disputed issue that is the Entry 33 of the Concurrent List. For getting a full view, let us see the third constitutional amendment of 1954. Before 1954, the Central government was keen on land reforms but the problem was the State government was not coordinating with the Central. To solve this problem third amendment was introduced and it amended entry 33 of the Concurrent list and Entry 27 of the State list. Amendments:

- In entry 33 it was altered as: The problem regarding production, supply and distribution of Essential Commodities have national dimensions and entry 33 enables the Central Government to efficiently manage Essential Commodities and Centre can regulate inter-state trade and commerce.
- In entry 27 of the State List it added, Production, supply and distribution of goods subject to Entry 33 of the Concurrent List.

This amendment worked out with the land reforms. But, in *Ch. Tika Ramji & others, etc vs The State Of Uttar Pradesh & Others on 24 April 1956*⁸ the Supreme Court held that only 'raw material' is not covered in industry it must cover production and manufacturing units in addition to this, all the industries set up in public interest are not to be considered under the preview of the Central Government but under the power of State Government.

Hence, Entry 33 of the Concurrent List doesn't give the Central Government the power to make statutes in the matter concerned to State Government widely covering the scope of agriculture also.

Among the Legislative powers of Centre v. State on making Farm Laws we can prudently see that the Central government has exaggerated the colourable exercise to torch its way out escaping from the pith and substance test in order to make the statutes, the power of making which is not in their own hands. This seems unconstitutional on the face of it!

V. FARM LAWS FROM THE ANGLE OF THE GOLDEN TRIANGLE OF THE CONSTITUTION AND DIRECTIVE PRINCIPLES OF STATE POLICIES

The Judiciary in India serves a crucial part in the functioning of the Country and is burdened with a load of solving all the problems of the people in such a way that they are satisfied with

⁸ All India Radio

the decision and it does not violate any provision laid down in the Indian Constitution. It is the Judiciary itself that highlighted the importance of Articles 14, 19 and 21, that together they safeguard the rights of the people and should be read together when dealing with an issue that concerns one of these articles. Initially, there was no Golden Triangle, however, as soon as it was realised that right to equality, freedom and personal liberty when combined, can play a major role in operating the judicial system, in keeping a check on the government and in protecting the rights of the citizens. The constitution has kept in mind both providing fundamental rights for securing the interests of the people and laying down the Fundamental Duties of the citizens so that the government can keep a check on its citizens.

(A) Recognition of the Triangle

The framers of the Indian Constitution had incorporated the Fundamental Rights from the beginning to safeguard the rights of the citizens from the State. At this time, the Fundamental rights of equality, freedom, and life and liberty were individual rights protecting their individual agendas. Even after securing the basic rights of the people, there have been many instances when these rights have been violated by the government for their own personal needs. One such example is of the Emergency of 1975 declared under Article 352 of the Indian Constitution when all the fundamental rights were suspended and people could not move to the court to enforce these rights. Several other instances have taken place where the people have approached the judiciary to give a clear understanding of the enforcement of the fundamental rights by the government and the people. In a landmark case of *A.K. Gopalan vs. the State of Punjab, 1950*⁹, the main debate revolved around the ‘procedure established by law’ on the point that can such procedure be arbitrary or should it always be fair, conforming with the principles of Natural Justice. It was decided by majority that the Right to Life under Article 21 did constitute the principles of Natural Justice. No procedure of law could suffer from unreasonableness or any problem. It was held that the fundamental rights have to be interpreted as ‘separate’ rights and not overlapping each other. After this, in another historic case – *Maneka Gandhi vs. Union of India*¹⁰, it was observed by the Supreme Court that Article 21 is not to be read in isolation; instead, all the violations and procedural requirements under Article 21 are to be tested for Article 14 and Article 19 as well. Thus, it was this case that laid down a new threshold that the legality of every law should be tested on the basis of the Golden Triangle of Article 14, 19 and 21 that is equality, freedom and personal liberty.

⁹ All India Radio

¹⁰ All India Radio

Now let us dig deeper into the fundamental rights and read them in relation to the DPSP's.

(B) Right to equality

1. Article 14

Equality before law—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The doctrine of equality before law is necessary corollary to the Rule Of Law which pervades the Indian Constitution. The underlying object of Article 14 is to secure to all persons, citizens and non-citizens, the equality of status and opportunity referred to in the Preamble to our Constitution. It embodies the principle of “non-discrimination”. However, it is not a freestanding provision. It has to be read in conjunction with right conferred by other articles like Article 21 of the Constitution. In *Reliance energy ltd. V. Maharastra State Road Development Corporation ltd. (2007)8 SSC1¹¹* it was held by the Supreme Court that Article 21 refers to “right to life” embodies several aspects of life. It includes ‘opportunity’. Articles 14 and 21 are the heart of the chapter on Fundamental Rights. They cover wide features of life. Also article 14 strikes the arbitrary state (includes both centre and state) actions, both administrative and legislative. There has been a significant shift towards equating arbitrary or unreasonableness as the yardstick by which administrative as well as legislative actions are to be judged. A basic and obvious test to be applied in cases where administrative action is attacked as arbitrary is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness. In *Union Of India vs. International Trading Company (2003)5 SSC437* it was held that non-compliance with the rule of natural justice amounts to arbitrariness violating article 14.

Secondly, “equal protection of laws” does not postulate equal treatment of all persons without distinction. What it postulates is the application of same law alike and without discrimination to all persons similarly situated. It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence.

Thirdly comes the very fundamental law of prudence which has been laid in *K.Timmappa v. Chairman, Central Board of Directors, AIR 2001 SC 467* “when a law is challenged to be discriminatory essentially on the basis that it denies equal treatment or protection, the question

¹¹ All India Radio

for determination by the court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation.”

(C) Right to Freedom¹²

1. Article 19

Protection of certain rights regarding freedom of speech,

(1) All citizens shall have the right—

- (a) to freedom of speech and expression ;
- (b) to assemble peaceably and without arms ;
- (c) to form associations or unions
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (g) to practise any profession, or to carry on any occupation, trade or business.

(D) Farming: an occupation

Under article 19(g) the right to freedom to practice any profession, or to carry on any occupation, trade or business is protected to all the citizens of India.

In *T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors* on 31 October, 2002¹³ the Supreme Court held that education is not covered under trade and commerce but is a profession.

It must be considered that farming is an occupation and a noble occupation just like education. Are we we tending to say to that 58% of India’s population is involved in trade and business?? In my opinion, to see farming as trade we are mistaken, rather the farmers and all the people included therein are exercising their RIGHT TO LIFE AND LIVELYHOOD and to realize the RIGHT TO LIFE of all the citizens of India is producing FOOD(in any form) that is the most basic need of RIGHT TO LIFE AND PERSONAL LIBERTY and is fulfilling that.

Thus, here we can see the actual correlation of Article 19 and 21 completing the GOLDEN TRIANGLE of the INDIAN CONSTITUTION.

(E) Right to Life¹⁴

ARTICLE 21 - Protection of life and personal liberty.—No person shall be deprived of his life

¹² Constitution Of India

¹³ All India Radio

¹⁴ Constitution Of India

or personal liberty except according to procedure established by law.

The word 'law' in article 21 does not mean merely enacted law but incorporates principles of natural justice so that a law to deprive a person of his life or personal liberty cannot be valid unless incorporates these principles in the procedure laid down by it.

As discussed earlier, if the right to livelihood is not treated as a part and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. This was held in *Olga Tellis v. Bombay Municipal Corp. (1986)*

(F) Directive Principles of State Policy

39. Certain principles of policy to be followed by the State. The State shall, in particular, direct its policy towards securing—

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

With respect to article 39(b) the Supreme court in *Sanjeev Coke Manufacturing Company v. Bharat Cooking Co. Ltd*¹⁵ held that the expression 'material resources of the community' is not confined to natural resources; it is not confined to resources owned by public; it means and includes all resources, natural and man-made, public and private owned. Therefore, all the things which are capable of producing wealth for the community would be material resources.

And the word 'distribution' has been given an expansive interpretation. It does not merely mean that the property of one should be taken over and distributed to others. What is required in the terms of constitutional scheme under article 39(b) and article 14 is to make essential commodity available at a fair price.

Article 39(c) contemplates measure for preventing concentration of wealth and means of production in a few private hands. Hence, this provision is strictly against the policy of privatisation.

31C. Saving of laws giving effect to certain directive principles.—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing 5[all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is

¹⁵ All India Radio

inconsistent with, or takes away or abridges any of the rights conferred by 6[article 14 or article 19]; 7[and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

VI. CAN PRIVATE MARKETS REPLACE APMCS?

There have been many fundamental challenges faced in the APMC like:

- Formation of cartels – a small number of wholesalers will fix the price or the limit of auction in order to get advantage of their oligopoly in a limited market.
- Cascading effect – cascading effect refers to the continuous rise in price which is broadly caused due to various fees in the APMC that are: market fees(3%), rural development fee(3%), commission agent fee(2.5% – 3%) and the transportation cost.
- NSS 70th round report documents that 55.9 percent of the total farmers were already selling to private traders.
- One of the main arguments in favour of contract farming is operational efficiency. More than 85 percent of land holdings are small (less than or equal to 2 hectares) and marginal (less than or equal to 1 hectare) in India. As per census 2011, the average size of landholdings in India was 1.1 hectares. The small size of farms has brought in challenges of farm viability and operational efficiency.
- Only 6% farmers are able to sell at MSP provided by the Government and a majority of farmer population is totally unaware about MSP.

All these factors along with other contributory factors leads to the natural shift of farmers from APMC to private traders and Contract Farming. Now let us see if Privatisation and Contract Farming is the way ahead:

- (a) Huge question on Preamble:** the very aim of making India a SOCIALISTIC DEMOCRATIC REPUBLIC is fading away as the privatisation of agriculture of an Agrarian Economy whose 56.6% population is one way or the other engaged in agriculture.
- (b) No level playing fields:** it is the violation of Article 14 that is ‘EQUALITY OF LAWS’ that the Central Government is exempting the private and contract farmers from taxes and on the other hand the State Governments have levied heavy fees in their respective APMC. Further this is also a violation of Article 39(c) as these inappropriate rules and regulations will lead to concentration of wealth.
- (c) No Judicial Intervention:** Again it is explicitly mentioned in the acts under section 8 of The Farmers’ Produce Trade and Commerce (promotion and facilitation)act and

under section 3(1), 13(1), 14 and 19 of the subsequent other act. The procedures for conciliation is put stress on where there is a probability of corruption and undue influence which is pure injustice to the farmers or individual seeking Justice.

- (d) Stocking and Price Control:** As the main aim of private market is to earn profit at any cost. And without aforementioned rules and regulations to regulate the process of stocking and warehousing of farm produce and the exemption of the limit to store produce under section 7(2) of the Farmers (empowerment and protection) Agreement on Price Assurance and Farm Services Act, 2020 it violates article 39(b) read with article 14. The storage and distribution of material resources unequally between the equals which violates the most fundamental right guaranteed by the Constitution to all person living in India. This is the only reason why Walmart is still prohibited in entering Indian markets.
- (e) Open To All:** The act asks for Permanent Account Number for anyone wants to step in the Private market license under section 4(1) of The Farmers' Produce Trade and Commerce (promotion and facilitation) act, 2020. There must have been clearly mentioned rules and regulations, registration and the provision for security deposits for a private party for the security of the farmers.
- (f) Vague And Uncertain** – Firstly these acts are absolutely silent about the MSP (minimum support price) which has caused a separate uproar from the affected community additionally that the Supreme Court held that “the policy of MSP shall be maintained until further orders”, this shows that the government is incomplete and vague in these acts. Secondly the section 2(k) of the Farmers (Empowerment and protection) agreement on Price Assurance and Farm Services Act, 2020 defines ‘notification’ in a vague sense.

VII. CONSTITUTIONAL UNCONSTITUTIONALISM

Under this section the essence and consequential effects of these acts, how the Central Government has played its cards, would these acts be able to stand in front of the Supreme Court on the basis of their constitutionality.

- In the Parliament of a Democratic country like India, the most powerful is the ‘majority’. And it is evident from procedure laid down in the Constitution with respect to draft a bill and the rest is done by ‘majority’. Firstly, three ordinances were passed under article 123 by the President, then in the next sitting of both the houses three bills were laid down and passed like anything, neither a proper discussion nor given to the

Standing Committee. But on the other side when the New Education Policies were laid down, even the public opinion was taken in the matter thereto. Now in these farm act where the future of more than half of the total population of India is on stake, this shows how irresponsible the Central Government is in moulding the provisions of the Constitution in their favour.

- Till now, the readers must be well acquainted with the material provisions of these Farm Laws and how they are in explicit contradiction of the Fundamental Rights (especially to the Golden Triangle), the DPSPs, the principle of Natural Justice as well as the most vital of all The Preamble Of the Constitution. This is a settled law if we refer to any landmark judgement from *Kesavananda Bharati... vs State Of Kerala And Anr on 24 April, 1973*¹⁶ to the most recent judgement of *Xavier'S Residency vs The State Of Kerala on 27 August, 2014*¹⁷, there is no doubt that Farm Laws are unconstitutional.
- Now let us talk about the stance of Supreme Court in matters filed as PILs. Before that we must consider one fact that Judiciary is a separate organ of the State and according to **Montesquieu's Theory of Separation of Powers** all the organs have broad separation of powers and must be exercised to the fullest but consequently remaining within the limits. It is not the main work of the Supreme Court that to encroach in other domains of the State, unlike the observations made by the Chief Justice Of India on the farmers protest that “blood will be in our hands, and showing concerns on the women and elders among the protesters” this is not the work of Judiciary and in fact to some extend unconstitutional. Even, the Supreme Court has not recorded *prima facie* finding that these acts are unconstitutional so that they may be further challenged on the concerned grounds. The Court must not be concerned about the principles or the topics outside their scope of their power, this ‘JUDICIAL ADVENTURISM’ questions the competence and independence of judiciary.

VIII. RATIONAL NEXUS – THE LITMUS TEST

The rational nexus means the logical relation between an action and effect; which is understandable by a prudent man. Understanding that relation is indeed not a rocket science. Usually, a man understands a thing in three ways; 1) by Observing; 2) by Learning; 3) by Experience. Understanding a matter from experience may not be his own experience; it may be learnt from others’ experience too. For example; you need not be self-experienced after seeing one slipping off the stair case due to own careless act, right?! The fairness and justice

¹⁶ Indiakanon.com

¹⁷ Indiakanon.com

will follow if the actions have a rational nexus; even if, it's not explained. Even though the principles of natural justice; *intelligible differentia* and *rational nexus* are formulated and adopted to the actions of the state is for the purpose of better administration, thereby curbing the abusive actions of the state and make them fair.

The main objectives that are proposed to be achieved are:

- Protection and empowerment of farmers
- Fair, transparent and efficient manner of implementation of provisions
- Freedom of choice

Here, the authors want to question the readers and what them to think prudently about all the material facts and the probable consequences and concerned grounds that are mentioned above, to see whether there is a reasonable nexus between the object and cause from the Central Government's perspective ?

IX. EPILOGUE

The Vth amendment of the constitution lays down *inter alia* that “no person shall be deprived of his life, liberty or property, without due process of law.” This concept is as much applicable to the US and to any other DEMOCRATIC REPUBLIC in the world.

Due process has two aspects. Substantive due process envisages that the substantive provisions of the law should be reasonable and not arbitrary. Procedural due process envisages a reasonable procedure i.e., the person affected should have a fair right of hearing which includes four elements (1)notice, (2)opportunity to be heard, (3)an impartial tribunal ; (4)an orderly procedure.

This is an absolute mourning situation for the Living Document as well as for whole India that this is the way how the majority rules out the Due Process of law in front of Its Guardian.

“What a colossal ignorance of knowledge of law and what perverse sense of justice must have been in the mind of the majority”.
