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# The Farm Acts 2020: A Dilemma in Disguise

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## ABSTRACT

*This Research paper focuses to initiate a discourse on a critical analysis of the recently introduced three Farm Acts in September 2020. In view of a dire need for reforms in the agrarian sector, these three Acts were recently passed with the objective of development of the agrarian sector and welfare of the farmers in India. However, in the event of receiving strong opposition, the fundamental question that arises is whether these reforms will result in the welfare or only add to the misery of the Farmers. The reforms prima facie appear to be beneficial on paper but then what led to the massive protests and such opposition. The paper seeks to analyse the far-reaching implications of these reforms. With due analysis, it can be observed that the recent reforms that look like a blessing might actually be a dilemma in the long run. The primary contention that arises is regarding the fate of the concept of MSP and the existing government-regulated AMPC when the private players enter the agricultural market. The paper seeks to highlight the suggested recommendations to escape the predicament after due analysis of the likely adverse implications of this enactment.*

## I. INTRODUCTION

The agrarian sector is a vital key player in the Indian Economy. Any agrarian reform brought about affects rural development, employment prospects, and most importantly the lives of people at large. The reason being that **58% of the population** is directly dependent on this sector as their principal source of income.<sup>4</sup> If these reforms brought by the Government seek to improve the agrarian sector, then why have they received strong opposition is the fundamental question. The prima facie aim of these reforms is to provide farmers with a greater choice of selling their produce by incorporating private players in the Agricultural market. However, when viewed in terms of practical implementation, these reforms will have far-reaching adverse implications.

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<sup>4</sup> Department of Commerce, Ministry of Commerce and Industry, Government of India. , 2020. *India Brand Equity Foundation, 'Indian Agriculture And Allied Industries Industry Report' (2020)*. (Dec. 01, 2020) <<https://www.ibef.org/industry/agriculture-india.aspx>>

To address the issues of contemporary times, it becomes pertinent to view the matter **through the lens of a historical perspective**. Agricultural reforms under the British rule were focused on serving the interests of British Industries among others. The regulations sought to provide raw material at the most reasonable price or even at the lowest of prices to serve the interests of these industries making India an underdeveloped nation. Ultimately it led to the exploitation of farmers at a large scale while the Britishers looted India to their advantage.

In the post-independence era, the greatest challenge before India was to uplift the agrarian economy. The farmers received low prices for their products and to provide them with incentive prices along with efficient buying and selling options, the Government of India brought in the concept of **Agricultural Produce & Market Committee (APMC)**. However, it is observed that the recent reforms by the Central Government may not directly but consequently and as an inevitable result will do away with such regulations that protected the interest of the farmers. This in turn brings the agrarian economy at the same pedestal where it was before independence. The Farmers will yet again face the dilemma of getting low prices for their produce and have no stance to bargain when they are dealing directly with giant corporations. Therefore, the recent reforms shall be further discussed in light of the inevitable consequences that can be apprehended and how adversely the agrarian economy will be affected.

In September 2020, three farm bills were passed by both the houses of the Parliament. On 27<sup>th</sup> September, the President of India gave his assent to the bills. These bills were passed in view of dire need for reforms in the agrarian sector.

**1. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.**

- This Legislation is aimed at widening the purview of sale of agriculture produce and permits direct dealing of the farmers with private corporations.
- The transactions outside the premises of APMC are exempted from any cess or tax.
- It seeks to do away with any barriers and regulations that restrict a nationwide dealing for sale of agricultural produce.
- It is aimed at providing the farmers with plethora of selling options to bring in market competitiveness.
- The act aims to set up a conciliation board for dispute redressal mechanism.
- In the event of failure to conciliate the parties can approach the SDM.

## **2. The Farmers' (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.**

- This legislation aims to promote contract farming in a national level framework.
- The minimum period for the farming agreement has been specified as one production cycle of livestock or one crop season
- The maximum period prescribed is 5 years for a framing agreement given that the production cycle is longer.
- The agreement must contain the price and quality of farm produce which should be mutually agreed.
- This Act aims to provide legal protection to the farmers by providing for a conciliation board.

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

- Section. 3(1A) has been inserted in the existing act.
- It states that the supply of such foodstuffs, including cereals, pulses, potato, onions, edible oilseeds and oils may be regulated by the government only under extraordinary circumstances.
- The extraordinary circumstances may include war, famine, extraordinary price rise and natural calamity of grave nature.
- This Act aims at improving the infrastructure and storage facilities
- The ease in the stock limits exists till the price of horticulture produce rises by 100% for retail price & that of non-perishables increase by 50%.

## **II. THE FARM ACTS 2020 AS AN ATTACK ON FEDERALISM**

As rightly said, “*whatever touches us all, should be decided by all*”. The Act which shall affect the lives of the farmers across the country and holds value to each state in their own way has neither been discussed nor negotiated with the states, which is a blatant ignorance of the federal structure. The primary concern that arises with such a hasty reform is that of convenient encroachment of power by the centre by framing laws on subjects that should fall within the purview of state power by manipulatively invoking the entries under Concurrent list to legislate. Earlier, with the introduction of the **Third Constitutional Amendment act**

1954<sup>5</sup>, the centre had tried to exceed its powers leaving the state powers only illusory. By this Amendment, the matters relating to managing trade and commerce were listed in the Concurrent list. It was done by extending the temporary power of parliament to legislate on matters in the state list under Article 369<sup>6</sup> and making it a permanent power by adding the matters of trade and commerce in Entry 33<sup>7</sup> of the concurrent list. The framers of the Constitution never intended for power under Article 369 to be manipulated to enlist the matters of state importance under concurrent list. This was opposed as it would result in total abrogation of powers of the state thereby states will not be able to legislate on matters of importance such as trade and commerce which directly affect the state.

**Agriculture is a state subject** under 7th Schedule List II Entry 14<sup>8</sup>. Apart from this, The List II, Entry 26 and 27 deal with trade and commerce within state and lays down guidelines on distribution of goods respectively. Upon this observation, it can be rightly said that, agriculture marketing intra-State rightly falls within the purview of powers of the state to legislate upon. Henceforth state shall hold the power to make decisions in this regard as the agriculture scenario varies from state to state and affects are seen accordingly. Further It is to be noted that Entry 26 and 27 in List II are subject to the provisions of Entry 33 of List III.

In pursuance of this, in September 2020 the Central Government conveniently invoked Entry 33 of the concurrent list in order to widen its powers to be able to legislate on matters relating to agriculture trade and commerce and has thereby brought the reforms under entry 33 of the Concurrent list. The centre has conveniently done away with any possible interference from the state. It had been rightly expressed by K. K. Basu that such disregard to **state autonomy** will result in Our Constitution heading to a road of becoming a unitary constitution leaving the state's power only illusory. The centre has shown a blatant disregard to the autonomy of the states by introducing this Act without the much-needed deliberations with the state<sup>9</sup>.

The *adventurism* does not end here. The Government has failed to follow the procedures expected to be followed to pass any bill<sup>10</sup>. The parliamentary rules allow the members to send the bill to Parliamentary Selection Committee for inspection. However, the bill has been passed without the required discourse and recommendations thereby stands to breach the parliamentary rules. The Government has shown an abuse of power by not abiding by the

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<sup>5</sup> The Constitution (Third Amendment) Act, 1954.

<sup>6</sup> INDIA CONST. art 369.

<sup>7</sup> The Constitution of India. Seventh Schedule List III Entry 33.

<sup>8</sup> The Constitution of India. Seventh Schedule List III Entry 14.

<sup>9</sup> Ministry of Home Affairs, 1983. *Report Of The Sarkaria Commission On Centre-State Relations*

<sup>10</sup> *Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)*.

parliamentary procedure laid by the Constitution of India shaking the very foundation of the Democracy by flouting the necessary deliberations.

### III. AN ANALYSIS OF THE CONCERNS ARISING FROM THE FARM ACTS

#### 1. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.

The act aims to ensure the direct selling of produce outside government regulated markets. It further holds provisions for tax exemption, facilities of online trading. The Government has failed to realize the practical aspect of these provisions. The major concern at hand is that this act, when viewed through the angle of practical implementation only adds up to the misery of the farmers.

At the outset, the act is an unnecessary intervention. It aims to provide freedom to sell farm produce outside government regulated markets i. e. *mandis*. However, there already exists such freedom and the provisions of the APMC Act provide the farmer with an option to sell their produce to private persons. Various states including Punjab have a special setting for private markets by amending the existing APMC Act in line with 2017 APMC model<sup>11</sup>. Further, the APMC acts contain exclusion clauses. Hence, it can be observed that the pre-existing Act does not curtail the freedom of the farmers to sell outside the APMC, the only transaction modulated by these APMC acts was the first transaction between the trader and the farmer excluding the trade being followed. The farmers could avail the choice of selling to the private players while their interests of price assurance were substantially safeguarded due to the prominence of APMC.

Further, it must be noted that as per the report of *National Sample Survey Office*<sup>12</sup>, it is a clear finding that 64% of the farmers are able to access private markets at free will while availing the security and protection of their interests due to prominence of APMC. Therefore, there was absolutely no necessity to bring this act under this claim. The Farm Act will only make APMC redundant and leave the agriculture market in the hands of private players. Ultimately resulting in exploitation of farmers. Only APMC is under the obligation to ensure Minimum Support Price (MSP) to the farmers<sup>13</sup>. This in turn will also resultantly diminish the concept of MSP and pose a great threat to the livelihood of the farmers.

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<sup>11</sup> *Punjab Agricultural Produce Markets (Amendment) Rules*. 16A-16F.

<sup>12</sup> National Sample Survey Organization Ministry of Statistics and Programme Implementation (MOSPI), Government of India, 2019. (Nov. 30, 2020, ). <[http://mospi.nic.in/sites/default/files/publication\\_reports/Quarterly\\_Bulletin\\_October\\_December\\_2019.pdf](http://mospi.nic.in/sites/default/files/publication_reports/Quarterly_Bulletin_October_December_2019.pdf)>

<sup>13</sup> Agricultural Marketing Division, Ministry of Agriculture and Farmers' Welfare, 2020. ( Dec. 02, 2020,

The government has offered constant assurance that the APMC and MSP will persist, but the promises made by the government on paper can in no way ease the inevitable misery of the farmers which is certain when the Act is implemented in practice. This will happen for various reasons.

*Firstly*, by the newly enacted law, the two parallel markets will come into play. It becomes pertinent to note that the APMC poses strict regulations and licensing, whereas, the new private markets will be non-regulated, thereby appearing as an easier and attractive market entry and will ultimately gain prominence over APMC. It does not fail the test of common sense that APMC will lose its prominence. Also due to private markets being free of regulations they are absolved from an obligation to provide farmers with the (MSP). In absence of stringent regulations, cartelisation cannot be prevented leaving the farmers at the mercy of corporate giants. At first, these private players will lure the farmers by providing *lucrative prices* for their produce. As a result a lion's share of the farmers will shift towards the private giants leaving behind the existing APMCs. It is inarguable that when no produce will reach the APMCs they will gradually end up winding up. Even if APMC has not been explicitly abolished, experts and farmers reasonably apprehend that when the APMCs will become redundant, MSP will undoubtedly be wiped out.

Further, due to this observed effect of the Act on APMC and MSP, there will be no pressure to implement Public Distribution System and the Government will not be informed and would not be in a position to control market transactions to farmer's advantage. There will be least government intervention as the market will predominantly fall in the hands of private corporations thereby endangering the interest of farmers.

*Secondly*, Section 6 of the Act<sup>14</sup> provides for **waiver of market cess and tax** on transaction outside the premises of APMC. This will be inimical for the states because a large part of state's revenue is generated from the agricultural mandis. That revenue is in turn utilised for the constructing link roads with mandis, strengthening the existing system. This clause is added merely to lure the farmers into the clutches of private corporations on the pretentious pretext of easing tax on transactions and serves no purpose, in fact, it hampers the rural development

*Thirdly*, The Act has an overriding effect on state APMC Act, therefore, the APMC act will lose its legal standing and autonomy. Henceforth the fundamental concern of the farmers

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T)<[http://agricoop.nic.in/sites/default/files/AR\\_2018-19\\_Final\\_for\\_Print.pdf](http://agricoop.nic.in/sites/default/files/AR_2018-19_Final_for_Print.pdf)>

<sup>14</sup> The Farmers' Produce Trade And Commerce (Promotion And Facilitation) Act, 2020. Section 6.

turns out to be true that without any autonomy and firm legal standing, the APMC along with assured MSP will automatically become redundant.

Another objective of this Act stated by the Government is to safeguard the farmers from exploitation by the commission agent i. e. *arhtiyas*. In doing so, the government overlooks the fact that 86. 2 % of farmers are marginalized who own less than 2 acres of land, still contributing to 50% of the crop output<sup>15</sup>. They live hand to mouth with small landholdings. This section of farmers live in the fear of losing their lands & do not seek loans from banks. The only reliance they can place to get loans is on the *arhtiyas*, ***who is the backbone of marginalized farmers.***

Further, the government fails to realize that instead of doing away with commission agents, this act will bring in private commission agents who will have greater incentives to exploit as the big public corporations will not deal with the small farmers directly. Therefore, the objective stated serves no purpose and only worsens the predicament. Furthermore, the provisions mentioned for electronic trading are of no use to the small scale farmers.

In states likes Punjab & Haryana which are chiefly indulged in agriculture an average farmer holds 3. 62 acres of land. Whereas a small-scaled farmer is under a debt of Rs 5, 57, 000 & a marginalized farmer is under debt of Rs 2, 76, 000. Forcing them to deal with the corporate giants whom they are incapable of attracting & cleverly swaying away with the MSP is not a wise decision according to the experts.

## **2. The Farmers' (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.**

The Legislation aims to incorporate '*Contract farming*' culture in our agriculture market. By means of this Act, the Government aims to provide multitude of opportunities to farmers to deal with private persons directly. However, it is blunder to ignore the fact that 86. 2% of the agrarian population is that of marginalized farmers. The profit-centred big private corporations, given their fortune and resources can easily sway the negotiations to their benefit. Ultimately, failure of the farmers to negotiate with the corporates will leave them with no other option but to succumb to low prices for their produce. It is evident from previous instances that the concern of the farmers are legitimate owing to the privatization in the fertilizers, pesticides & seeds whose price was expected to decrease but the results turned out to be otherwise.

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<sup>15</sup> Ministry of Agriculture and Farmers Welfare, 2015. *All India Report On Number And Area Of Operational Holdings, Agricultural Census (2015-16)*.



It is a well-known fact that Private corporations work on profit basis and have an eye for landholdings. Such transfer of power and control over the fate of Agriculture will lead to exploitation at a massive scale. The Government has laid down various provisions that implicitly shackles the fate of the agrarian economy at the hands of private corporations.

**Firstly**, Section 3 clause 1 of the Act<sup>16</sup> elaborates on what is included under the “*Farming Agreement*”. Upon analysis, it can be evidently stated that it does not explicitly assure for any *price fixation*. Without any rules on *price fixation*, the incentive price become open to negotiation, where clearly, the private players have a predominant position and the stance of the farmers to bargain is merely illusory.

**Secondly**, Upon analysis Section 5 of the Act<sup>17</sup> which deals with price guarantee. It can be observed that the *guaranteed price* is merely the price agreed to be paid by the contracting party irrespective of the market variations. The guaranteed price in no way serves the purpose of MSP. If the legislators genuinely intended the welfare of the farmers, MSP would find a firm interpretation in the Act. This would ensure that the contracting party, under no circumstance, deals at an unjust low price for the farmers’ produce. Henceforth, by this act, the indebted farmer can be compelled to sell his crop at price less than the MSP. This exploitation is most likely to take place where a certain crop or vegetable is at the lowest demand.

**Lastly**, The government has given a mere assurance against exploitation under Chapter III of the Act that specifies provisions for Dispute Settlement. However it can be clearly observed upon its interpretation that Section 19 of the act<sup>18</sup> absolves any remedy available under the jurisdiction of civil court in case of breach of the contracts. Judiciary is the only autonomous organ which is independent of any external interference and deliver unbiased justice. In case of any breach, the farmer cannot approach the judiciary for redressal due to the restriction sought by this provision. By means of Section 14 of the Act<sup>19</sup>, the government has sought for a quasi-judicial based redressal system where the disputes shall be settled through conciliation at first. In case the grievance still exists, the SDM decides upon the matter. S. 14(4) empowers the aggrieved party to appeal to Assistant collector or collector. However, the fundamental question that where the party aggrieved by the decision of collector go,

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<sup>16</sup> The Farmers’ (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. Section 3 (1).

<sup>17</sup> The Farmers’ (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. Section 5

<sup>18</sup> The Farmers’ (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. Section 19.

<sup>19</sup> The Farmers’ (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. Section 14.

remains unanswered. This highlights a substantial lacunae of dispute redressal in the legislation. Moreover, administration is not an independent wing like judiciary, paving a way for the ruling government to interfere in an administration of justice. The primary intent of constitution makers was to keep the judiciary immune from any executive control or interference.<sup>20</sup>

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

Through this enactment, the government has eased the restrictions imposing stock limits on prescribed items. Limits of hoarding with respect to these prescribed items has been done away with by inserting Section 3(1A)<sup>21</sup> into the existing act. This gives rise to reasonable apprehension of hoarding and black marketing of such goods. This puts the private giants in a position to cause ‘*artificial price fluctuation*’ at any time. The reason being that they own massive store houses & cold stores. Given the resources, the private giants can hoard the goods after the harvest when prices are moderate & release the goods in the market when the market variation is in their favour. The Act nowhere provides for substantial benefit either for the farmer or the consumer. In fact the consumers will be drastically hit with the artificial price rise when these corporate giants will hoard and make black marketing a common practice. Moreover, the state government will not be in a position to have requisite information regarding the availability stock of a particular foodstuff the state.

## **IV. SUGGESTED RECOMMENDATIONS**

Amidst the present situation, it is important to highlight the suggested reforms by the experts which have still not been implemented<sup>22</sup>. The Central Government has shown complete disregard to the practical implementation of the Farm Acts 2020. In view of the above discourse, it becomes pertinent to safeguard the interests of the farmers.

### **1. MSP as a Legal Right : One Nation One MSP**

It has been recommended in several instances by the Punjab and Haryana High Court, that MSP is a solution to the grievances of farmers to a certain extent but without any legal standing, it is unassured. In order to improve income prospects and for the welfare of the farmers, giving MSP a legal declaration is a suggested step that needs to be taken. MSP when implemented on stricter terms will result in price fixation considering all the factors of market and not be manipulated by the private players. MSP should not be restricted to only **23 crops**,

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<sup>20</sup> UOI v. Sankalchand Himatlal Sheth (1977) 4 SCC 193.

<sup>21</sup> The Essential Commodities (Amendment) Act, 2020. Section 3(1A).

<sup>22</sup> Hota, Biswajit & Singh, Shyam & Ph, Singh & Scholar,. (2020). Swaminathan Committee Report: An Overview. 6. 626-633.

it has been recommended by several experts that MSP should be for all crops as it is in the case of MRP. MSP should not only be a suggested system without any implementation but should be given an enforcement and legal standing.

Let us understand the significance of MSP through an example, If our markets alone had been so structured then there is no reason why truckloads of paddy is been illegally transported all the way from Bihar to Punjab where APMC markets were set aside in 2006. Year after year story remains the same. Punjab has **cash credit limit (CCL)** of Rs. 35, 000 cr to purchase the paddy arriving at state mandis. This CCL has been decided after field data collection by expecting that the paddy procurement of this year will be 162 Lakh Metric Tonne (LMT). Whereas the procurement touched 195 LMT which is **33 LMT more than the estimated**. For which Punjab had to seek an additional CCL of Rs. 8, 000 cr from the RBI, says the Principal Secretary of Food & Supplies. By monitoring arrivals and doing backward integration this disparity in the numbers suggested purchase of cheap paddy from outside the state mainly Bihar and selling the same at MSP in Punjab.

Here the sole contention is that if MSP is the highest price that a paddy farmer could get then why the mainline economists **failed to recognise its importance ever since**.

## **2. Dispute redressal mechanism in recognition of Right to approach the court of Law in civil matters**

No person shall be deprived of justice. In view of the same, the Indian Constitution provides for justice for all. Every person has a right to approach court to settle disputes

Upon the analysis of the Farm Acts 2020, it can be observed that section 15 of the Farmer's produce Trade and Commerce (Promotion and Facilitation) Act<sup>23</sup> and Section 19 of the Farmers (Empowerment and protection) Agreement on Price assurance and Farm services Act<sup>24</sup> Bars the jurisdiction of civil court in case of dispute between the farmers and the private companies.

It is well articulated in the Article 50 of Indian Constitution that judiciary is the most autonomous organ and free from any interference thereby seeks to serve unbiased justice.<sup>25</sup> Therefore, Exclusion of such restriction to approach the court of law in the civil matters is suggested in order to uphold the principle of **"justice for all"**

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<sup>23</sup> The Farmers' Produce Trade And Commerce (Promotion And Facilitation) Act, 2020. Section 15.

<sup>24</sup> The Farmers' (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. Section 19.

<sup>25</sup> INDIA CONST. art 50.

### 3. The Need to direct the reforms towards strengthening the existing system of APMC and price assurance<sup>26</sup>

In order to address the existing problems in the Agriculture Sector, the government should consider to bring reforms that strengthen the pre-existing APMC Act instead of replacing it with a more flawed Act. The policies should be based on improving the existing infrastructure.

Producer Support Estimate (PSE) provides an assessment of gross farm receipts. It states that farmers in US, Canada, Brazil, China, Japan, Switzerland, Norway, Mexico are in receipt of massive subsidy support from their government. Norway tops this subsidy support with 60% subsidy which is *phenomenally high*. This makes the fact crystal clear that agriculture is supported very well in developed countries. The mainline economists in India should realise that markets in India needs substantial amount of subsidies to remain afloat.

Some prerequisites for boosting the agriculture in India are strong of web link roads around the *mandis*, transportation facilities, electrical supply & storage facilities with climate control. Once a smooth connectivity of villages with *mandis* has been established this will give a push to the agrarian sector.

Currently there are 7000 APMCs including sub-market yards operating throughout the country. Majorly farmers are hit by the this poor & uneven distribution of markets. National Commission for farmers state that there should be a *mandi* every 80 square kilometres, whereas in the existing system there is a *mandi* every 435 square kilometres. Thus the government ought to set up an even market network for the farmers to sell their produce.

It has been noted by experts in several instances that there exists a dire need to bring in cost effective storage and processing with transportation facilities along with other technological and research advancements.<sup>27</sup> It is inarguable that the existing government regulated markets are in need for reforms. And if these markets are not functioning up to the mark, the solution is to detect the flaws and & take them off instead of heading towards a road to privatization.

APMC ensures MSP but in implementation it has given only minimal results. Only 6% of the farmers are able to reap the benefit out of it. The government should extend the benefit of

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<sup>26</sup> 2013. *Agriculture Marketing To Promote Reforms*. (Dec 3, 2020) <https://dmi.gov.in/Documents/stminprreform.pdf>.

<sup>27</sup> *Agricultural Marketing and the role of Graamin Haats*". Report 62. Ministry of Agriculture and Farmers' Welfare [30 Nov, 2020], [http://164.100.47.193/isscommittee/Agriculture/16\\_Agriculture\\_62.Pdf](http://164.100.47.193/isscommittee/Agriculture/16_Agriculture_62.Pdf)

MSP to the remaining 94% farmers through policies & reforms. This leaves no doubt that strengthening the existing system will bring prosperity in the agrarian sector.

## V. CONCLUSION

In light of the above discourse highlighting the adverse implications of the recent reforms in the agrarian sector, it can be concluded that it is the need of the hour to take prompt action by incorporating necessary amendments towards the welfare of farmers.

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