



ANALYSIS OF CONSTITUTIONAL VALIDITY OF THE FARM LAWS, 2020

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ABSTRACT

The Parliament has recently enacted the three farm laws. A lot of controversies and debates have erupted with regard to the constitutional validity of these laws. Apart from questions, like whether the introduced laws are detrimental to the farmers, one of the major questions is that whether the Union is competent to enact such laws. The researcher in the research paper have analysed the various issues in order to find the answer of the above-mentioned question. The researcher discussed about the concept of 'federalism' especially with respect to the basic power sharing scheme, the position of 'agriculture' in the State List, the interpretation and analysis of Entry 33 of List III. With reference to above-listed three issues, the researcher then throws light upon the application of the doctrine of pith and substance with respect to the farm laws. In the suggestions and conclusion part, the researcher has given his opinion with regard to the question of the competency of the Union to enact the farm laws. Moreover, the author has also given the suggestions regarding the issue of farm laws and Entry 33 of List III.

Keywords: Farm Laws, Federalism, Agriculture

INTRODUCTION

Federalism has been held to be one of the pillars of the basic structure of the Indian Constitution. The power division scheme relating to the Centre and States is not provided for under any Central law but in the Constitution itself. The Constitution specifies the division of

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powers between the Centre and States in the 7th Schedule. The validity of any law passed by the Union of State is judged with reference to their respective jurisdiction as specified in the Constitution.

Recently, the Parliament has enacted three Farm Laws. These three farm laws has erupted controversy among the stakeholders at various levels such as socio-economic, political, legal and constitutional. The present research paper will only deal with the constitutional aspect o the Farm Laws, 2020.

A lot of controversy is going around with regard to the constitutional validity of the farm laws. One section of people feel that the Union is incompetent to legislate the Farm Laws as ‘agriculture’ is an exclusive ‘State’ subject and moreover it violates the principle of ‘federalism’ which is one of the pillars of the Basic Structure Doctrine. The other section feels that the Centre is competent to legislate on the subject. Their argument rests upon the premise of Entry 33 of List III which grants power to the Centre to legislate under ‘Trade and Commerce’.

The present research paper will analyse the whole issue of Farm Laws from the constitutional perspective. The researcher will try to find out the competency of the Union to frame the Farm Laws by analysing the following issues:

- (i).About the concept of federalism and basic scheme of power sharing.
- (ii).Analysing the position of the subject-matter of ‘Agriculture’ in the State List.
- (iii).Interpretation of Entry 33 of List III.
- (iv).Analysing the Pith and Substance of the Farm Laws.

BACKGROUND OF FARM LAWS, 2020

The Central Government in 2017 released model farming acts. However, the Standing Committee on Agriculture (2018-19) observed that many reforms mentioned in these model acts had not been implemented by the States. Moreover, the committee also noted that the laws which regulates Indian Agricultural Markets (like those related to APMCs) were not being implemented in a fair manner and thereby not serving the purpose for which they have been formulated.

Therefore, a committee comprised of seven Chief Ministers was formed in July, 2019 to

discuss the implementation. The Centre in June, 2020 has promulgated three ordinances. Later, these ordinances were initiated in the Parliament as Farm Bills in September, 2020. These bills got passed from both the houses of Parliament and thereafter received the assent of the President.

A lot of debates and controversies are going around with regard to the constitutional validity of the Farm Laws, 2020. Many States and the opposition parties feel that Union is incompetent to legislate these farm laws as 'agriculture' is a subject-matter of State List. Moreover, they also feel that these farm laws violate the principle of Federalism and the spirit of Constitution. On the other hand, the Central Government considers these laws to be perfectly valid. It seems that the Central Government has invoked Entry 33 of List III in order to formulate these farm laws.

The matter is pending in the Hon'ble Supreme Court. The Supreme Court stayed the implementation of the Farm Laws, 2020.

ABOUT THE CONTROVERSIAL FARM LAWS, 2020

The three controversial farm laws aimed to change the way agricultural produce is marketed, sold and stored across the country. The three Farm Laws are as follows-

1. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020²: The Act provides for opening up of agricultural sale and marketing outside the notified Agricultural Produce Market Committee (APMC) mandis for farmers thereby removing the barriers to intra-state and inter-state trade. This helps in expanding the 'freedom of choice' of farmers with respect to sell and purchase of agricultural produce. The Act also provides for the electronic trading of agricultural produce. The Act prohibits the State Governments from levying any market fee, cess on the trade which is conducted outside the APMC market.

2. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020³: The Act provides the legal framework for farmers to enter into a

² The Farmers' Produce Trade and Commerce (Promotion And Facilitation) Act, 2020, No. 21, Acts of Parliament, 2020(India).

³ The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, No. 20, Acts of Parliament, 2020(India).

contract farming agreement with companies and big corporate houses for sell and purchase of agriculture produce. The agreement should be made at a mutually agreed price between the parties. The agreement should be in written form and must be entered by both parties prior to the production or rearing of any farm produce. The agreement must contain the terms and conditions with regard to supply, grade, quality, standards and price of farm produce and services. The Act also provide for a dispute resolution mechanism for settling the disputes between both parties.

3. The Essential Commodities (Amendment) Act, 2020⁴: The Amendment removes the cereals, pulses, oilseeds, onion, edible oils and potatoes from the list of essential commodities. The amendment deregulates the production movement, storage and distribution of these food commodities. The Centre will regulate such items only under “extra ordinary circumstances” such as war, famine, extra ordinary price rise. The stockholding limits in case of price rise can be imposed if the annual retail price rise exceeds 100% in horticultural produce (basically onions and potatoes) and 50% for non-perishables (cereals, pulses and edible oils).

THE CONCEPT OF INDIAN FEDERALISM AND THE BASIC SCHEME OF SHARING OF LEGISLATIVE POWER BETWEEN THE CENTRE AND STATES

The Constitution of India is federal in structure. It provides for a dual polity, a two-tier governmental system with one at the Central level i.e. Central Government and the other at the State level i.e. State Government. The Constitution sets out the sphere of powers of each level of government by providing an elaborate scheme of distribution of legislative, administrative and financial powers between the Centre and States. Both the levels of governments should act only within their assigned field and does not encroach upon the field assigned to the other government.

India is a federal country like many other federal countries such as USA, Canada, Australia. But unlike many other federations, India does not follow a strict and conventional federal pattern. Though it follows many of the techniques with regard to federal structure which have been developed in other federations, but it has also devised some unique and novel techniques of its own for maintaining the federal fabric of the country.

⁴ The Essential Commodities (Amendment) Act, 2020, No. 22, Acts of Parliament, 2020(India).

The constitution-makers deliberately inserted the word ‘Union’ instead of ‘Federalism’ in order to indicate two things (a) the Indian Union has not been made as a result of an agreement by the States, (b) the component states cannot secede from the Union. The entire country though divided into different states is considered as an integrated whole. The Indian Federal System provides for a strong centralisation. The Central Government has a more dominant role than the States. In the Concurrent List, both the Centre and States can legislate but the Centre has an upper hand in case of disagreement. The Emergency Provisions in the constitution changes the federal set-up into the unitary system in order to meet the national emergencies effectively. Moreover, under certain special situations, the Parliament is competent to legislate in the exclusive State field.

In spite of the fact that Centre has an upper hand in the Indian Federal System but the State also enjoy a large amount of autonomy in the Indian Constitution. The States are not the mere agents of the Centre. The States derived their powers from the Constitution and not from the Central laws. In normal times, the States possess the exclusive right to legislate with respect to the State List and the Centre cannot encroach upon the field assigned to States. Moreover, the Centre needs the support and co-operation of the States for amending the federal part of the Constitution. In the words of Dr. B.R. Ambedkar, “*The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but the Constitution itself. This is what the Constitution does. The States, under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and States are co-equal in this matter.*”⁵

The Supreme Court in many cases recognized federalism as an essential feature of the Indian Constitution and also tried to interpret the laws whereby the federal structure could be preserved and protected. In the case of ‘*S.R. Bommai v. Union of India*’, the Hon’ble Supreme Court held that federalism is a part of the basic structure of the Constitution.⁶ It further stated, “*Neither the relative importance of the legislative entries in Schedule VII, List I and II of the Constitution, nor the fiscal control by the Union per se is decisive to conclude that the*

⁵ Dr. B.R Ambedkar, CAD, Vol XI, 25th November, 1949.

⁶ *S.R. Bommai v. Union of India*, 1994 SCC (3) 1.

Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The status quo the Constitution is federal in structure and independent in the exercise of legislative and executive power.”⁷

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In the case of *NCT Delhi* case, the Supreme Court emphasized upon the concept of collaborative federalism.⁸ It stated that the Centre and States should work in a co-operative and harmonious manner for achieving the common objective. It further stated that the concept of federalism is very vital and it is needed in order to protect the interests of different people who come from different backgrounds and cultures.

Moreover, the Supreme Court in the case of ‘*Union of India v. H.S.Dhillon*’ observed that a challenge can be brought to the Parliamentary Laws if it encroaches upon the State List.⁹ It specifically states that the Parliamentary Laws can be challenged only on two grounds (i) if the subject is in the State List, (ii) if it violates the fundamental rights.¹⁰ That’s why the current Farm Laws have been challenged by the Petitioners on the grounds of encroachment upon the State List and thereby violating the federal principle of the Constitution.

Article 246 provides for the sharing of legislative powers between the Centre and States on the basis of subject-matter. There is a three-fold distribution of legislative powers between the Union and States, made by the three lists in the Seventh Schedule of the Constitution. The Lists are-

1. **Union List (List I):** In this list, the Union has the exclusive power to make laws. It consists of 98 subjects. The subjects mentioned in this list are of national importance. Example- defense, foreign affairs etc.

2. **State List (List II):** In this list, the State has the exclusive power to make laws. It consists of 59 subjects. The subjects mentioned in this list are of regional or local importance. Example- public order, police, agriculture etc.

3. **Concurrent List (List III):** In this list, both the Union and State have the power to make

⁷ Id.

⁸ State (NCT of Delhi) v. Union of India (2018) 8 SCC 501.

⁹ Union Of India v. H.S. Dhillon, 1972 AIR 1061.

¹⁰ Id.

laws. It consists of 52 subjects. Example- Criminal law and procedure, civil procedure etc. In case of conflict between the Central law and State law in the Concurrent List, Central law will prevail. However, the State law can prevail if it gets the Presidential assent after reservation but the Parliament still has the power to override with its law.

The Centre has predominance over the division of legislative relation. As per Article 246, in case of overlapping between List I and List II, List I will prevail. Similarly, if there is overlapping between List I and List III then List I will prevail and List III will be given priority over List II. Moreover, under the residuary powers the Centre has the exclusive power to make laws in any of the matter which is not mentioned in any of the three lists. Under special circumstances, the Parliament has the power to make laws for the State also. These special or extra ordinary circumstances are ‘when Rajya Sabha passes a resolution’, ‘during national emergency’, ‘when two or more state make a request’, ‘to implement International agreements’ and ‘during President’s Rule’. But other than these circumstances i.e. in the normal times State has the exclusive power to make laws in List II and Centre cannot encroach upon it.

IS ‘AGRICULTURE’ AN EXCLUSIVE SUBJECT-MATTER OF THE STATE LIST?

“In the Seventh Schedule of the Indian Constitution, terms relating to ‘Agriculture’ has occurred in the 15 places. These are-

1. In the Union List-

- (i).Entry 82: Taxes on income other than agricultural income.
- (ii).Entry 86: Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of companies.
- (iii).Entry 87: Estate duty in respect of property other than agricultural land.
- (iv).Entry 88: Duties in respect of succession to property other than agricultural land.

2. In the State List-

- (i).Entry 14: Agricultural, including agricultural education and research, protection against pests and prevention of plant diseases.
- (ii).Entry 18: Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agriculture land,

land improvement and agricultural loans; colonization.

(iii).Entry 28: Market and fairs.

(iv).Entry 30: Money-lending and money-lenders; relief of agricultural indebtedness.

(v).Entry 45: Land revenues, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

(vi).Entry 46: Taxes on agricultural income.

(vii).Entry 47: Duties in respect of succession to agricultural land.

(viii).Entry 48: Estate duty in respect of agricultural land.

3. In the Concurrent List-

(i).Entry 6: Transfer of property other than agricultural land.

(ii).Entry 7: Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

(iii).Entry 41: Custody, management and disposal of property(including agricultural land) declared by law to be evacuee property.”¹¹

As can be seen in the above-mentioned entries related to ‘Agriculture’, the entries in the Union List and the Concurrent List contains the words ‘other than’ and ‘exclusive’ with regard to ‘agriculture’ except in Entry 41 of the Concurrent List. This shows that the constitution-makers wanted to keep the subject-matter related to ‘agriculture’ out of the jurisdiction of Parliament. The entries in the State List show that the subject-matter of ‘agriculture’ is in the exclusive domain of States. Moreover, none of the above entries mentioned in the State List is subject to any entry in the Union List or Concurrent List.

A large section of Indian population depends directly or indirectly on agriculture. Agriculture is a multi-faceted activity. The term ‘Agriculture’ has been expressively specified and mentioned in the Entry 14 of List II. Moreover, keeping in mind the multi-dimensional nature of ‘agriculture’, the constitution-makers made entries 15,16,17,18,21,26,27,28,30,32,45 in List II in order to cover all the ancillary or connected matters with regard to ‘agriculture’.

¹¹ INDIA CONST. Schedule VII, List I, Union List, Entry 82, 86, 87, 88, List II, State List, 14, 18, 28, 30, 45, 46, 47, 48, List III, Concurrent List, 6, 7, 41.

However, there are certain ancillary or subsidiary matters related to ‘agriculture’ which have also been included in Union List and Concurrent List. Moreover, some of the agricultural-related ancillary matters in the State List are subject to entries in Union List and Concurrent List. Example- Entry 17,24,26,27 in List II. In these entries which are subject to Union and Concurrent List, states have the power with respect to all matters in these entries until the Union occupies the respective matter. If Union occupies any matter in these entries then also the States have the power to legislate with respect to other matters in these entries. Moreover, these agricultural-related entries subjected to Union List and Concurrent List can be used by Parliament in case of extra-ordinary situations or in case the matter is expedient in the interest of public at large. But other than these situations, the State Legislatures will possess exclusive power with respect to agriculture and its related matters. A Constitution Bench in the case of *ITC Ltd. v. Agricultural Produce Market Committee*(2002) held that, “*The Constitution of India deserves to be interpreted, language permitting, in a manner that it does not whittle down the powers of the State Legislature and preserves the federalism while also upholding the Central supremacy.*”¹²

Thus, on considering the holistic perspective and analysing all the three lists, it can be very well stated that ‘Agriculture’ is a State subject.

To have a more clearer view with regard to ‘agriculture’ being an exclusive state subject, Constituent Assembly debates related to Entry 14 in List II should be looked at. One of the member of the Constituent Assembly proposed an amendment to reserve the power to make laws related to agriculture exclusively with the Centre. Another member named Sibban Lal Saxena proposed an amendment to include ‘agriculture’ in List III instead of List II. Both the amendments got negative and Entry 14 was placed in List II. Moreover, one of the members of Drafting Committee named T.T. Krishnamachari countered the above-stated amendments and said that agriculture in India is a vast topic and Centre is not capable to deal it effectively. Moreover, he also said that with regard to the proposed amendments, a meeting between Drafting Committee and State Ministers was held and it was decided that the provincial autonomy should be preserved with regard to agriculture and resist the further encroachment of the Centre. He further added that the Union could manage the country’s agriculture by supporting the State Governments with grants. Therefore, the intention of the constitution-

¹² ITC Limited v. Agricultural Produce Market Committee, AIR 2002 SC 852: (2002) 1 SCALE 327.

makers is pretty much clear that they want to keep the ‘agriculture’ within the exclusive domain of the State.

HISTORICAL BACKGROUND AND INTERPRETATION OF ENTRY 33 OF CONCURRENT LIST

Entry 33 of Concurrent List states that:

“Trade and commerce in, and the production, supply and distribution of, -

(a).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;

(b).foodstuffs, including edible oilseeds and oils;

(c).cattle fodder, including oilcakes and other concentrates;

(d).raw cotton, whether ginned or unpinned, and cotton seed; and

(e).raw jute.”¹³

The Central Government seemed to have invoke Entry 33 of List III for enacting the Farm Laws, 2020. Therefore, in order to assess the constitutional validity of the Farm Laws, 2020, a clear picture of Entry 33 of List III is required.

Historical Background of Entry 33 of List III:

The original version of the Constitution contained only one sub-entry in Entry 33 of List III i.e. sub-entry (a). Other sub-entries from (b) to (e) were not there in the Entry 33 of List III. The original version of the Constitution contained Article 369. With the help of this article, Parliament temporarily got the power to make laws on agricultural trade and commerce within a State for a period of five years.¹⁴ This provision was made because at that time there was federal instability in the country and also the issues with regard to food shortages and supplies, so the constitution-makers felt that in order to deal with such instabilities, Parliament should be given the power to manage agricultural trade and commerce within a State for a temporary period of five years.

The article got lapsed in 1954 but the situation with regard to food shortages and supplies

¹³ INDIA CONST. Schedule VII, List III, Concurrent List, Entry 33.

¹⁴ INDIA CONST. art. 369, cl.(a.)

seems to persist. So, a need was felt to continue with the same arrangement. Therefore, in 1954 an amendment was made in Entry 33 of List III and four sub-entries were added with a view to give permanence to the above-mentioned provision of Article 369. The Statement of

Objects and Reasons of the Third Amendment states that;

“Entry 33 of the Concurrent List enabled Parliament to legislate in respect of industries declared to be under Union control. In addition, Parliament was empowered by article 369, for a period of five years, to legislate in respect of certain specified essential commodities. It was not considered advisable that after article 369 lapsed to control the production, supply and distribution of some of these essential commodities. The bill seeks to amplify Entry 33 of the Concurrent List accordingly.”¹⁵

Moreover, the Minister for Commerce and Industry T.T. Krishnamachari in his opening speech clarified that amendment was needed because many states in India were deficit in food production and the Union had to protect the interests of weaker states. Therefore, it can be very well stated that the intention of the Union while amending Entry 33 of List III was only for meeting the exigent circumstances and the scarcity of essential articles. The Union never intended to use the amended entry in the general scenario.

What to be included in foodstuffs:

The term “foodstuffs” does not only mean the final food product that will be consumed but it also comprises of the raw food articles which after processing be consumed as food by human beings. The Hon’ble Supreme Court in the case of ‘*Nathuni v. State of West Bengal*’ held that wheat, wheat products, paddy, sugar and sugarcane would fall under the definition of “foodstuffs”.¹⁶

Definition of Industry:

The sub-entry (a) of Entry 33 of List III talks about ‘industry’, therefore it is essential to understand the definition of ‘industry’-

The Hon’ble Supreme Court in the case of ‘*Tika Ramji v. State of Uttar Pradesh*’ had defined

¹⁵ INDIA CONST. Schedule VII, List III, Concurrent List, Entry 33, *amended by* The Constitution (Third Amendment) Act, 1954.

¹⁶ *Nathuni v. State of West Bengal*, AIR 1964 Calcutta 279.

the word ‘industry’.¹⁷ As per the court, the expression ‘industry’ includes the process of manufacture or production and does not include the raw materials which are used in the industry or the distribution of the products in the industry.¹⁸ The court further said that raw materials as goods would be included in Entry 27 of List II and the products of the industry would also be included in Entry 27 of List II unless that products are of the controlled industry which would then fall under Entry 33 of List III.¹⁹

The same interpretation was carried forward by the Hon’ble Supreme Court in ‘*ITC Ltd. v. Agricultural Produce Marketing Committee (2002)*’, where the court held that the State Legislature is empowered to levy market fee on the sale of raw tobacco in a market area as it is a pre-manufacture activity(i.e. raw materials).²⁰

DOCTRINE OF PITH AND SUBSTANCE VIS-À-VIS THE FARM LAWS

About Doctrine of Pith and Substance:

Parliament or the State Legislature should act within the domain assigned to them. It should not encroach upon the domain of the other. Any law made which encroaches upon the domain of the other is declared as invalid. If a subject is exclusively in the State List then the power to legislate in that subject exclusively vests in the State Legislature. But if it also falls under List I then power is with the Union. Similarly, if it is in List III then the power deemed to belong to the Centre.

But such a strict separation of lists would limit the powers of legislatures and every law would deem to be invalid on the ground that it is encroaching upon other’s domain. Therefore, for adjudging whether any particular law is within the domain of one legislature or the other, the courts apply the ‘Doctrine of Pith and Substance’.

As per this doctrine, the pith and substance (i.e. the true nature and character) of legislation has to be ascertained in order to determine the List to which the impugned legislation belongs to. The Courts for ascertaining the Pith and Substance of the legislation give regard to (i). The Enactment as a whole, (ii). To its main objects, (iii). To the scope and effects of its provisions.

¹⁷ Tika Ramji v. State of Uttar Pradesh, AIR 1956 SC 676.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

The rule of pith and substance saves the law which impinges upon the domain of the other incidentally. Thus, if the substance of the enactment falls in Union List but incidentally encroaches upon State List then the law will not be declared invalid.

The Supreme Court in a number of cases applied the Doctrine of Pith and Substance. Some of these are-

1. In the case of '*State of Bombay v. F.N. Balsara*', the Bombay Prohibition Act was challenged on the ground that the prohibition of liquors on the borders was the subject-matter of the Union.²¹ The Court applied the rule of pith and substance and upheld the Act by stating that the matter is in the State List though it was impacting the import of liquor.²²

2. In the case of '*Prafulla Kumar Mukherjee v. Bank of Khulna*', the Bengal Money Lenders Act was in question.²³ The Act was passed to scale down the debts which have been owed by agriculturists and it was challenged on the ground that being a State Legislation it affected the promissory notes which is a central subject-matter. The Court while applying the rule of pith and substance stated that the law is valid as it dealt with money-lenders and lending' which is under State List and it incidentally encroaches upon 'promissory notes' which is a central subject-matter.

3. In the case of '*State of Rajasthan v. Shri G Chawla*', the Ajmer (Sound Amplifiers Control) Act, 1952 which is enacted by the State Legislature was challenged.²⁴ The Judicial Commissioner of Ajmer held that the Act is invalid as it fell under Entry 31 of List I and not under Entry 6 of List II.²⁵ The Supreme Court disagreed with the decision of Judicial Commissioner and held the legislation as valid. It stated that considering the pith and substance of the legislation, the State Legislature was well within its power to legislate as the main issue of amplifiers (related to health and tranquillity) was within the domain of State and incidentally encroaches upon the Union List.

Pith and Substance of Farm Laws:

The position of the Entry 33 of List III and the subject-matter of 'agriculture' has been

²¹ State of Bombay v. F.N. Balsara, AIR 1951 SC 318.

²² Id.

²³ Prafulla Kumar v. Bank of Commerce, Khulna, 74 I.A. 23.

²⁴ State of Rajasthan v. Shri G Chawla, AIR 1959 SC 544.

²⁵ Id.

extensively discussed in the previous chapters. The agriculture and its related matters falls under the State List, though it also incidentally falls under Union List and Concurrent List. Entry 14 of List II contains the word ‘agriculture’ in the general sense and therefore should be given widest possible interpretation extending to all ancillary and subsidiary matters which can reasonably be comprehended within it.

Entry 33 of List III covers some of the incidental matters related to agriculture but on considering the historical background with respect to sub-entries (b) to (e) of Entry 33 of List III it can be very well stated that Entry 33 of list III should be resorted in limited matters of agriculture only under special circumstances and not under ordinary circumstances.

The constitutionality of the three farm laws have been challenged on these broad grounds whereas the Central Government thinks that it is well within its competence to enact the farm legislations. The main argument from the side of Central Government is that ‘trade and commerce and the production, supply and distribution’ are under Entry 33 of List III and moreover, Entry 26 and 27 of List II are subject to Entry 33 of List III. Therefore, they believe that they have the competence to enact farm laws through the route of ‘trade and commerce’. That’s why for ascertaining the constitutionality of the Farm Laws, it is important to analyse the pith and substance of these laws. Let’s analyse the various areas of the Farm Laws:

(a). Definition of ‘foodstuffs’ given in Acts-

Section 2(c) of ‘The Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 talks about farmers’ produce. It states that:

“farmers’ produce means-

- (i). foodstuffs including cereals like wheat, rice or other coarse grains, pulses, edible oilseeds, oils, vegetables, fruits, nuts, spices, sugarcane and products of poultry, piggery, goatery, fishery and dairy intended for human consumption in its natural or processed form;
- (ii). cattle fodder including oilcakes and other concentrates; and
- (iii). raw cotton whether ginned or unginned, cotton seeds and raw jute;”²⁶

The same definition of farmers produce is given in Section 2(h) of ‘The Farmers

²⁶ The Farmers’ Produce Trade And Commerce (Promotion And Facilitation) Act, 2020, § 2(c), No. 21, Acts of Parliament, 2020(India).

(Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.²⁷

Thus, definition of ‘farmers’ produce’ has given rise to certain severe contentions. This definition has tried to equate foodstuffs with agricultural produce. If such a wide interpretation would be given to ‘foodstuffs’ then the powers listed so elaborately in State List with respect to agriculture would become redundant. The term ‘fisheries’ is within the exclusive domain of States under Entry 21 of List II. Moreover, the terms ‘poultry, piggery, goaetry, dairy’ are covered under Entry 15 of List II. Therefore, such enlargement of the definition of foodstuffs would result in the encroachment upon the State List.

(b). Issue of making these farm laws through the route of trade and commerce by invoking Entry 33 of List III:

It seemed that the Centre has enacted these farm laws through the route of trade and commerce of agricultural produce. Entry 33 of List III talks about ‘trade and commerce and the production, supply and distribution’.²⁸ Moreover, the Entry 26 (deals with Trade and Commerce within the State) and Entry 27 (deals with production, supply and distribution of goods) of State List are subject to Entry 33 of List III. Therefore, the Centre could argue that it is well within its powers to legislate on contract farming, intra and inter-state trade and prohibit states from imposing fees/cesses outside the APMC areas.

But, the purview of Entry 33 of List III in ‘trade and commerce’ with respect to agriculture is limited. The raw materials have been specifically excluded from the definition of ‘industry’ in sub-entry (a) of Entry 33 of List III. The items of agricultural produce have been specifically given in sub-entries (b) to (e) in Entry 33 of List III. Moreover, it has been previously discussed that enlarging the scope of ‘foodstuffs’ without following the due procedure specified in the Constitution (i.e. in the form of constitutional amendment and ratification of at least on-half of the States) would result in encroachment upon the domain of the State and make the State List redundant.

²⁷ The Farmers (Empowerment And Protection) Agreement On Price Assurance And Farm Services Act, 2020, § 2(h), No. 20, Acts of Parliament, 2020 (India).

²⁸ INDIA CONST. Schedule VII, List III, Concurrent List, Entry 33.

The committee headed by Ashok Dalwai and Ramesh Chand suggested that ‘agricultural market’ to be inserted under the Concurrent List. Therefore, it is implicit from the recommendation that ‘foodstuffs’ in Entry 33 of List III does not empower Parliament to enact these laws and Entry 33 of List III only has the limited purview of trade and commerce with respect to agriculture. On March 27, 2018, the government told the Lok Sabha that it has no intention of including ‘agricultural market’ in the List III.

Moreover, in the previous chapter, the historical background of Entry 33 of List III showed the conditions under which sub-entries (b) to (e) were inserted. Therefore, the entry 33 of List III should only be resorted under special circumstances and not under ordinary circumstances. At present, there are no special circumstances related to food supplies which forced the Central Government to enact these laws.

One of the law named ‘The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020²⁹’ talks about contract farming. This law also seemed to be made through the route of trade and commerce by invoking Entry 33 of List III. Entry 33 of List III does not contain a word about contract farming. Such a wide interpretation of Entry 33 of List III would dismantle the powers related to agriculture given in List II. Moreover, prior to the enactment of the legislation, many State Governments within the powers given under List II have already laid down provisions related to contract farming in their APMC Acts. This shows that state governments within their jurisdiction possess the competency to enact contract farming laws.

One of the most serious problem of enacting the farm laws through the route of trade and commerce is that just like education ‘**farming is also considered as an occupation and not trade and commerce**’. In my opinion, seeing farming as a trade and commerce would be incorrect. The farmers are exercising their ‘Right to Life and Livelihood’ in order to realize the ‘Right to Life’ of all citizens by producing food which is the most basic right of ‘Right to Life and Personal Liberty’.

(c). **Overriding Effect of Farm Laws over APMC Act:**

²⁹ Id.

Section 14 of ‘The Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 gave the overriding effect to the farm laws over the inconsistent provisions of the State APMC laws.³⁰

Agriculture and its related-matters are the subject-matter of List II. States within their competence have framed State APMC laws. Entry 14, 26, 28 empowers the State Legislatures to frame APMC laws. Therefore, giving an overriding effect to Farm Laws over the State APMC Laws would result in encroachment upon the State List.

(d).Constitutionality of ‘The Essential Commodities(Amendment) Act, 2020:

As per my opinion this Act is constitutionally valid and it did not encroach upon the State List. The Centre is competent to make this law under Entry 33 of List III. Though farmers have certain contentions with this law but it cannot be challenged on the ground of constitutionality as the policy-making function rests with Parliament.

Therefore, after analysing the pith and substance of the three farm laws, I can say that the laws named; ‘The Farmers Produce Trade and Commerce(Promotion and Facilitation) Act, 2020’ and ‘The Farmers(Empowerment and Protection) Agreement on Price Assurance and Farm Services’ are invalid as the pith and substance of these laws showed that Centre doesn’t have the competence to enact these laws and by enacting these laws it has encroached upon the List II whereas ‘The Essential Commodities (Amendment) Act, 2020’ is valid as the pith and substance of this laws showed that Centre has the power to enact this law.

ANALYSIS OF FARM LAWS VIS-À-VIS DOCTRINE OF COLOURABLE LEGISLATION

About Doctrine of Colourable Legislation

The doctrine of colourable legislation is based on Latin maxim which meant that what cannot be done directly cannot also be done indirectly. The applicability of this doctrine arises when a legislature seeks to do something indirectly when it cannot do it in a direct manner. This doctrine tests the competency of the Legislature to enact a particular legislation which is in question.

³⁰ The Farmers’ Produce Trade and Commerce (Promotion And Facilitation) Act, 2020, § 14, No. 21, Acts of Parliament, 2020(India).

The doctrine of colourable legislation does not check the bona fide or mala fide on the part of the legislature while making the legislation. Thus, the competency of the legislature determines the validity of the legislation and not the motive with which the particular legislation has been made. The Parliament and the State Legislatures have to act within their domain of powers as specified by the Constitution. Sometimes while making legislation, the legislature outreaches its limits as specified by the Constitution. That outreach may be patent, manifest or direct or may be disguised, covert or indirect. The doctrine of colourable legislation is applied to the latter class of cases i.e. where the outreach is disguised, covert or indirect. The basic idea is that when legislature while passing any legislation purport to act within its sphere of power but the substance of the legislation and the reality shows that it has overreached its powers by resorting to disguised, indirect or covert means.

A colourable legislation can better be described as, “It is only when a legislature having no power to legislate frames a legislation so camouflaging the same as to make it appear to fall within its competence, the legislation enacted may be regarded as colourable legislation.”

The colourable legislation is a fraud on the Constitution. One of the landmark case of Hon’ble Supreme Court with regard to colourable legislation is ‘*State of Bihar v. Kameshwar Singh*’.³¹ In this case, the validity of Bihar Land Reforms Act, 1950 has been challenged. This law dealt with the abolition of landlord system, providing the payment of compensation to landlord on the basis of income which accrues to him on basis of rent. The arrears of rent which due to the landlord prior to the date of acquisition were to be vested to the State and half of these arrears were to be given to the landlord as compensation. The court said that the Act is a bad law on ground of colourable legislation and declared it as void under Entry 42 of List III. The Court further said that the Act doesn’t provide any compensation; it takes the whole and returns the half which in reality means nothing more than taking half and returning nothing.

Analysis of Farm Laws, 2020 With Respect To Doctrine of Colourable Legislation:

The pith and substance of the Farm Laws, 2020 discussed in the previous chapter indicates that these farm laws are within the legislative domain of the State and the Centre is incompetent to legislate these farm laws. The analysis of Entry 33 of List III and farm laws

³¹ *State of Bihar v. Kameshwar*, 1952 1 SCR 889.

showed that though 'Trade and Commerce' is in the Concurrent List but the farm laws are related to 'agriculture' which is out of the legislative domain of the Union. The farm laws incidentally touch upon the Entry 33 of List III. There are various provisions in the farm laws which have no connection with Entry 33 of List III. One such example of this is the inclusion of provisions related to 'market' in the farm laws. Entry 28 of List II specifically deals with 'markets' and Entry 33 of List III doesn't include the term 'markets'. That's why it can be said that the Centre has enacted these farm laws by using an indirect or disguised approach. One of the arguments from the Centre side is that the farm laws are beneficial for the economic upliftment of the farmers. This argument of the Centre does not stand on the test of Doctrine of Colourable Legislation as the intention with which the legislation has been made is irrelevant in determining the colourability of the legislation.

Therefore as per my opinion, the farm laws are invalid as they did not stand upon the test of 'Doctrine of Colourable Legislation'.

SUGGESTIONS AND CONCLUSION

With regard to all the previous discussions, the author is of the opinion that the two laws named 'Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020' and 'Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020' are unconstitutional. These farm laws come under the ambit of 'Agriculture' which is the exclusive subject-matter of State List. The Centre indirectly through the route of 'trade and commerce' by invoking Entry 33 of List III have enacted these legislations. Such an indirect approach adopted by the Centre to pass these laws violates the spirit of Constitution as well as the spirit of Federalism. Moreover, such a move severely affects the State powers which have been listed so elaborately in the Constitution. There is no doubt that Parliament is superior to States in many matters but that does not give them the legitimacy to encroach upon the exclusive matters which have been listed in the State List.

The Courts in many cases have elaborated on the concept of cooperative federalism. The Centre and States should work in a harmonious manner for achieving the objectives. The Centre should not concentrate the powers at its own level and it's the duty of the Centre to provide breathing space to State in order to uplift the principle of cooperative federalism.

I am of the opinion that the Centre should only act as an assisting and advising body to the State Governments with respect to matters related to ‘Agriculture’. I also feel that the scope of Entry 33 of List III should be reviewed. The scope of the Entry 33 of List III should be determined on the basis of the conditions under which the Entry has been framed. For uplifting the principle of federalism, a judicial intervention is necessary to prevent the misuse of Entry 33 of List II.
