

FARM LAWS, THEIR CONSTITUTIONAL VALIDITY, AND HOPE

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With the [Supreme Court of India staying the operation of the farm laws](#) and setting up a committee of experts to negotiate with the government and the farmers, the agitation being carried on by the farmers is entering a new phase. The [farmers' unions have not reacted favourably](#) to the formation of the experts' committee. As it happens, the committee does not comprise entirely impartial experts. Most of them are well known and strong defenders of the [farm laws](#), and are critical of the agitation.

For conducting negotiations with both the government and the farmers, the members of the committee ought to and should be known to have an open mind on the core issues, which alone will create a necessary confidence in the parties concerned. The farmers have, however, made it clear that they will not agree to anything less than the repeal of these laws. This would mean that the present agitation is likely to continue indefinitely. It is not yet clear what impact the report of this committee will have on the final decision of the Supreme Court on the question of the constitutional validity of the farm laws. That is the real issue before the Supreme Court. So whatever the experts' committee recommends, the question of the constitutional validity of the farm laws can be decided only after a proper hearing of the matter before the Court. The most curious thing about a decision on this issue by the Supreme Court is that if the Court upholds the validity of the laws, the agitation will not stop because the farmers' demand is for the repeal of the laws.

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But the government of India seems to have taken a maximalist approach, particularly on the question of a repeal of the farm laws. While the repeal of a law is a simple legislative act, having to repeal a law in which the government has invested a lot of its prestige is not so easy especially for a government which is extremely proud of its numerical majority in the Lok Sabha, which has generated a great deal of hubris. On the other hand, the farmers are unyielding on the demand for a repeal.

The constitutional validity of the farm laws has been challenged in the Supreme Court mainly on the ground that Parliament has no legislative competence to enact these laws, the subject matter of which is essentially in the State list. But there is a more fundamental reason to challenge these enactments which will be examined now.

It is a universally acknowledged fact that the voting on the Farm Bills in the Rajya Sabha was not done in accordance with the rules of the House. These rules require the Chair to order the recording of votes (division) by members even when one member demands it. The Deputy Chairman of the House, who was conducting the proceedings at that time, did not order division although a few members openly and loudly demanded it. It is true that there was disorder in the House but it could have been controlled and a proper voting could have been conducted. Disorder was not taking place for the first time in the House. Thus, there was a violation of the rules of the House in passing the Bills by voice vote when there was a demand for division.

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But the matter goes beyond the violation of the House rules. It involves the violation of the Constitution itself. Article 100 says that all questions at any sitting of either House shall be determined by a majority of votes of the members present and voting. Majority can be determined only in terms of number, and therefore what this Article requires is that all questions in the House should be determined by recording the votes of the members present and voting. Majority cannot be determined through voice vote. In fact the Constitution does not recognise voice vote to determine majority in a legislature. However, deciding a question by voice vote is a practice prevailing in all legislatures. This was devised for the sake of convenience and there is always an assumption that since the government of the day has a majority, any proposal before the House has the support of the majority. But that assumption goes when a member demands voting in the House and the Chair has, then, no option but to order the actual voting. Since this was not done and the Bills were all passed by voice vote, there is a violation of the rules as well as the Constitution.

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It is true that Article 122 of the Constitution protects the proceedings of the House from judicial review. But this protection is available only when the proceedings are challenged on irregularity of procedure. Violation of the Constitution is not a mere irregularity of procedure. The Supreme Court in Raja Ram Pal's case had clarified that the proceedings can be challenged on substantive grounds like violation of the Constitutional provisions. Therefore, the Farm Bills were passed in the Rajya Sabha in violation of Article 100 of the Constitution and can be challenged in the Supreme Court on that ground.

Now what are the options before the Supreme Court if and when such a challenge is made? The Court can strike down the whole laws as the requirement of Article 107 has not been fulfilled. This Article says that a Bill shall not be deemed to have been passed unless it has been agreed to by both Houses. As has been explained above, the Bills have not in fact been passed by the Rajya Sabha because the majority had not been determined in accordance with Article 100. It would mean that the three Bills did not become laws.

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The Court may also invalidate the proceedings of the Rajya Sabha and send the three 'Acts' back to that House for further proceedings in accordance with the constitutional provisions. If this happens, it may provide a good opportunity to the government to revisit these laws. These can then be referred to a Select Committee of the Rajya Sabha which can invite the farmers and all other stakeholders and finally produce better Bills. Such an opportunity is invaluable in the present circumstances when the government is facing virtually a no-win situation. If, on the other hand, the government decides to withdraw the Bills after these are sent back to the Rajya Sabha on the ground that it wants to bring fresh Bills with altered proposals, it will have that option too under the rules of the House. The possibility of these options can be creatively considered for finding a solution to this problem.

We may not forget that the issue that needs to be settled by the top court is only the constitutional validity of the laws. In resolving a problem like the agitation by farmers against the laws, the centrality of Parliament in the legislative process in all its dimensions should not be lost sight of. Once the Court decides the legality or constitutionality of a law, the political and legislative aspects of the issue will have to be dealt with only by Parliament. Parliament and its systems alone can produce a satisfactory solution. The only condition is that the government which is accountable to Parliament should genuinely demonstrate its faith in those systems.

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