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FARM ACTS – UNWANTED CONSTITUTIONAL ADVENTURISM

Relevant for: Indian Economy | Topic: Agriculture Issues and related constraints

The passage of the three Farm Acts by Parliament has led to a constitutional debate. These Acts are: the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, and the Essential Commodities (Amendment) Act, 2020. Does the Union government have the authority to legislate on what are rightfully the affairs of States? Many States have questioned the constitutional validity of the Farm Acts and are reportedly exploring legal options.

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Agriculture is a State subject in the Constitution, listed as Entry 14 in the State List (List II). This apart, Entry 26 in List II refers to "trade and commerce within the State"; Entry 27 refers to "production, supply and distribution of goods"; and Entry 28 refers to "markets and fairs". For these reasons, intra-State marketing in agriculture was always considered a legislative prerogative of States.

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Seen in this perspective, Parliament's passage of the Farm Bills was an extraordinary step. For this purpose, the central government invoked Entry 33 in the Concurrent List (List III). Entry 26 and 27 in List II are listed as "subject to the provisions of Entry 33 of List III". Entry 33 in List III is the following: 33. 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 unginned, and cotton seed; and (e) raw jute.

Entry 33, in its present form, was inserted in List III through the Constitution (Third Amendment) Act, 1954. That its import was significant is clear in the heated constitutional debates around the Amendment. After tabling in the house, the Constitution (Third Amendment) Bill was referred to a Joint Committee. In the Joint Committee, there was severe opposition to the Bill from seven members: N.C. Chatterjee, K.S. Raghavachari, A. Krishnaswamy, Parvathi Krishnan, Bimal Commar Ghosh, V. Venkataramana and Harish Chandra Mathur. In the final report, these members also wrote an important note of dissent.

The contention of the dissent was the following. As per Article 369 in the original version of the Constitution, the responsibility of agricultural trade and commerce within a State was temporarily entrusted to the Union government for a period of five years beginning from 1950. The 1954 Amendment attempted to change this into a permanent feature in the Constitution. But according to the dissenting members, "the Constitution makers did not desire to place matters enumerated in Article 369 in the Concurrent List". If indeed they were placed in List III, "State autonomy would be rendered illusory and State powers and rights would be progressively pulverised…", and "…the legislative authority of State legislatures is *pro tanto* abrogated". As a result, the Amendment would be "…permanently depriving the State legislatures from effectively exercising their legislative judgement in respect of certain vital matters…."

Parliament discussed the Bill in September 1954. In his opening speech, Minister for Commerce and Industry T.T. Krishnamachari clarified that the Amendment was required because many States were deficit in food production, and the Centre had to “safeguard the interests of the weaker units in the Union”. His point was that it was the adverse food situation in the country that necessitated the Amendment.

But many eminent Opposition members were not impressed, and pointed to the spirit of the dissent note. In their eloquent elaborations, Asoka Mehta and K.K. Basu argued that States such as Bihar, Bombay, Travancore-Cochin and Assam had explicitly opposed the Bill. Basu said that Article 369 was retained as a temporary feature in the Constitution because “the situation in the country [after 1947] was abnormal” and “the food situation was very bad….” But the Constitution-makers knew that the situation would return to “normal” in a few years. That was why they did not vest the listed powers with the Centre for more than five years. Hence, its conversion into a permanent provision was unwarranted.

Asoka Mehta warned that if the Centre truly wanted control on trade and commerce in States, then, over time, it would also want to have “control over crop planning and cultivation”. Thus, the Bill would lead to “an expanding encroachment on the rights of the States”; “a progressive erosion of State powers”; and “the possibility of side stepping of democratic processes”. According to K.K. Basu, “passage of the Bill would transform the Indian Constitution into a “unitary Constitution” instead of a “federal Constitution” and reduce “all the States’ powers into municipal powers”. A “reactionary legislation” was being introduced as “an innocuous piece of legislation”.

Notwithstanding the strong dissenting voices, the Bill was passed. But history appears to have proven the dissenters right. In September 2020, the same Entry 33 was invoked to usurp the same powers of the States that the dissenters feared would be taken away.

In many of its judgments after 1954, the Supreme Court of India has upheld the legislative powers of States in intra-State agricultural marketing. Most notable was the ruling of the five-judge Constitution Bench in *I.T.C. Limited vs. Agricultural Produce Market Committee (APMC) and Others*, 2002. The Tobacco Board Act, 1975 had brought the development of the tobacco industry under the Centre. However, Bihar’s APMC Act continued to list tobacco as an agricultural produce. In this case, the question was if the APMC in Monghyr could charge a levy on ITC for the purchase of unprocessed tobacco leaves from growers. An earlier judgment had held that the State APMC Act will be repugnant to the Central Act, and hence was *ultra vires*.

But the Constitution Bench upheld the validity of the State APMC Act, and ruled that (a) market fees can be charged from ITC under the State APMC Act; (b) State laws become repugnant only if the State and Centre enact laws on the same subject matter under an Entry in List III; and (c) in those cases outside List III, one has to first examine if the subject matter was an exclusive entry under List I or List II, and only after determining this can one decide on the dominant legislation that would prevail. In the case of the Farm Acts of 2020, the applicable points are (a) and (c). With regard to (a), States could continue to charge *mandi* taxes from private markets anywhere in the notified area regardless of the Central Act. With regard to (c), the State legislation should prevail as agriculture is an exclusive subject matter — Entry 14 – in List II.

In summary, first, it was unwise on the part of the Centre to use Entry 33 in List III to push the Farm Bills. Such adventurism weakens the spirit of federal cooperation that India needs in this hour of crisis. Second, agriculture is exclusively a State subject. Everything that is ancillary or subsidiary to an exclusive subject in List II should also fall under the exclusive legislative purview of States. Most importantly, Entry 28 in List II — i.e., “markets and fairs” — is not subject to Entry 33 in List III. In short, there appears to be a strong case to reasonably argue

that the Farm Acts have poor legal validity, if not being outrightly unconstitutional.

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