

# THE ESSENTIAL COMMODITIES (AMENDMENT) BILL, 2020

Relevant for: Developmental Issues | Topic: Rights Issues - Consumer Rights in India

## Highlights of the Ordinance

- The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020 allows intra-state and inter-state trade of farmers' produce beyond the physical premises of APMC markets. State governments are prohibited from levying any market fee, cess or levy outside APMC areas.
- The Farmers Agreement Ordinance creates a framework for contract farming through an agreement between a farmer and a buyer prior to the production or rearing of any farm produce. It provides for a three-level dispute settlement mechanism: the conciliation board, Sub-Divisional Magistrate and Appellate Authority.
- The Essential Commodities (Amendment) Ordinance, 2020 allows the central government to regulate the supply of certain food items only under extraordinary circumstances (such as war and famine). Stock limits may be imposed on agricultural produce only if there is a steep price rise.

## Key Issues and Analysis

- The three Ordinances aim to increase the availability of buyers for farmers' produce, by allowing them to trade freely without any license or stock limit, so that an increase in competition among them results in better prices for farmers. While the Ordinances aim to liberalise trade and increase the number of buyers, de-regulation alone may not be sufficient to attract more buyers.
- The Standing Committee on Agriculture (2018-19) noted that availability of a transparent, easily accessible, and efficient marketing platform is a pre-requisite to ensure remunerative prices for farmers. Most farmers lack access to government procurement facilities and APMC markets. It noted that small rural markets can emerge as a viable alternative for agricultural marketing if they are provided with adequate infrastructure facilities.
- The Standing Committee also recommended that the Gramin Agricultural Markets scheme (which aims to improve infrastructure and civic facilities in 22,000 Gramin Haats across the country) should be made a fully funded central scheme and scaled to ensure presence of a Haat in each panchayat of the country.

## PART A: HIGHLIGHTS OF THE ORDINANCE

### Context

Agricultural markets in India are mainly regulated by state Agriculture Produce Marketing Committee (APMC) laws. APMCs were set up with the objective of ensuring fair trade between buyers and sellers for effective price discovery of farmers' produce.<sup>[1]</sup> APMCs can: (i) regulate the trade of farmers' produce by providing licenses to buyers, commission agents, and private

markets, (ii) levy market fees or any other charges on such trade, and (iii) provide necessary infrastructure within their markets to facilitate the trade.

The Standing Committee on Agriculture (2018-19) observed that the APMC laws are not implemented in their true sense and need to be reformed urgently. Issues identified by the Committee include: (i) most APMCs have a limited number of traders operating, which leads to cartelization and reduces competition, and (ii) undue deductions in the form of commission charges and market fees.<sup>13</sup> Traders, commission agents, and other functionaries organise themselves into associations, which do not allow easy entry of new persons into market yards, stifling competition.<sup>[2]</sup> The Acts are highly restrictive in promotion of multiple channels of marketing (such as more buyers, private markets, direct sale to businesses and retail consumers, and online transactions) and competition in the system.<sup>13</sup>

During 2017-18, the central government released the model APMC and contract farming Acts to allow restriction-free trade of farmers' produce, promote competition through multiple marketing channels, and promote farming under pre-agreed contracts.<sup>[3]</sup><sup>[4]</sup> The Standing Committee (2018-19) noted that states have not implemented several of the reforms suggested in the model Acts.<sup>13</sup> It recommended that the central government constitute a Committee of Agriculture Ministers of all states to arrive at a consensus and design a legal framework for agricultural marketing. A High Powered Committee of seven Chief Ministers was set up in July 2019 to discuss, among other things: (i) adoption and time-bound implementation of model Acts by states, and (ii) changes to the Essential Commodities Act, 1955 (which provides for control of production, supply, and trade of essential commodities) for attracting private investment in agricultural marketing and infrastructure.<sup>[5]</sup>

The central government promulgated three Ordinances on June 5, 2020: (i) the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020, (ii) the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020, and (iii) the Essential Commodities (Amendment) Ordinance, 2020.<sup>[6]</sup><sup>[7]</sup><sup>[8]</sup> The Ordinances collectively seek to (i) facilitate barrier-free trade of farmers' produce outside the markets notified under the various state APMC laws, (ii) define a framework for contract farming, and (iii) impose stock limits on agricultural produce only if there is a sharp increase in retail prices. The three Ordinances together aim to increase opportunities for farmers to enter long term sale contracts, increase availability of buyers, and permits buyers to purchase farm produce in bulk.

## Key Features

### The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020

- **Trade of farmers' produce:** The Ordinance allows intra-state and inter-state trade of farmers' produce outside: (i) the physical premises of market yards run by market committees formed under the state APMC Acts and (ii) other markets notified under the state APMC Acts. Such trade can be conducted in an 'outside trade area', i.e., any place of production, collection, and aggregation of farmers' produce including: (i) farm gates, (ii) factory premises, (iii) warehouses, (iv) silos, and (v) cold storages.
- **Electronic trading:** The Ordinance permits the electronic trading of scheduled farmers' produce (agricultural produce regulated under any state APMC Act) in the specified trade area. An electronic trading and transaction platform may be set up to

facilitate the direct and online buying and selling of such produce through electronic devices and internet. The following entities may establish and operate such platforms: (i) companies, partnership firms, or registered societies, having permanent account number under the Income Tax Act, 1961 or any other document notified by the central government, and (ii) a farmer producer organisation or agricultural cooperative society.

- **Market fee abolished:** The Ordinance prohibits state governments from levying any market fee, cess or levy on farmers, traders, and electronic trading platforms for trade of farmers' produce conducted in an 'outside trade area'.

#### **The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020**

- **Farming agreement:** The Ordinance provides for a farming agreement between a farmer and a buyer prior to the production or rearing of any farm produce. The minimum period of an agreement will be one crop season, or one production cycle of livestock. The maximum period is five years, unless the production cycle is more than five years.
- **Pricing of farming produce:** The price of farming produce should be mentioned in the agreement. For prices subjected to variation, a guaranteed price for the produce and a clear reference for any additional amount above the guaranteed price must be specified in the agreement. Further, the process of price determination must be mentioned in the agreement.
- **Dispute Settlement:** A farming agreement must provide for a conciliation board as well as a conciliation process for settlement of disputes. The Board should have a fair and balanced representation of parties to the agreement. At first, all disputes must be referred to the board for resolution. If the dispute remains unresolved by the Board after thirty days, parties may approach the Sub-divisional Magistrate for resolution. Parties will have a right to appeal to an Appellate Authority (presided by collector or additional collector) against decisions of the Magistrate. Both the Magistrate and Appellate Authority will be required to dispose of a dispute within thirty days from the receipt of application. The Magistrate or the Appellate Authority may impose certain penalties on the party contravening the agreement. However, no action can be taken against the agricultural land of farmer for recovery of any dues.

#### **The Essential Commodities (Amendment) Ordinance, 2020**

- **Regulation of food items:** The Essential Commodities Act, 1955 empowers the central government to designate certain commodities (such as food items, fertilizers, and petroleum products) as essential commodities. The central government may regulate or prohibit the production, supply, distribution, trade, and commerce of such essential commodities. The Ordinance provides that the central government may regulate the supply of certain food items including cereals, pulses, potatoes, onions, edible oilseeds, and oils, only under extraordinary circumstances. These include: (i) war, (ii) famine, (iii) extraordinary price rise and (iv) natural calamity of grave nature.
- **Stock limit:** The Ordinance requires that imposition of any stock limit on agricultural

produce must be based on price rise. A stock limit may be imposed only if there is: (i) a 100% increase in retail price of horticultural produce; and (ii) a 50% increase in the retail price of non-perishable agricultural food items. The increase will be calculated over the price prevailing immediately preceding twelve months, or the average retail price of the last five years, whichever is lower.

## PART B: KEY ISSUES AND ANALYSIS

### Availability of buyers for farmers' produce and infrastructure

The Trade and Commerce Ordinance provides buyers the freedom to buy farmers' produce outside the APMC markets without having any license or paying any fees to APMCs. The Contract Farming Ordinance provides a framework for buyers and farmers to enter into a contract (before a crop season starts) which guarantees farmers a minimum price and buyers an assured supply. The third Ordinance amends the Essential Commodities Act to provide that stock limits for agricultural produce can be imposed only when retail prices increase sharply and exempts value chain participants and exporters from any stock limit. The three Ordinances aim to increase the availability of buyers for farmers' produce, by allowing them to trade freely without any license or stock limit, so that an increase in competition among them results in better prices for farmers.<sup>[9]</sup> While the Ordinances aim to liberalise trade and increase the number of buyers, this may not be sufficient to attract more buyers.

For instance, in 2006, Bihar repealed its APMC Act with a similar objective to attract private investment in the sector and gave charge of the markets to the concerned sub-divisional officers in that area.<sup>[10]</sup> This resulted in a lack of required marketing infrastructure as the existing infrastructure eroded over time due to poor upkeep.<sup>1,2</sup> In unregulated markets, farmers faced issues such as high transaction charges and lack of information on prices and arrival of produce.<sup>2</sup> The Committee of State Ministers, constituted in 2010 for agricultural marketing reforms, observed that complete deregulation of markets did not help in attracting any private investment.<sup>2</sup> It noted that there is a need for an appropriate legal and institutional structure with a developmental type of regulation to ensure orderly functioning of markets and to attract investment for infrastructure development.<sup>2</sup> The Standing Committee on Agriculture (2018-19) recommended that the central government should create marketing infrastructure in states which do not have APMC markets (i.e. Bihar, Kerala, Manipur, and certain union territories).<sup>1,[11]</sup>

Note that the Ordinances do not repeal the existing APMC laws (as done by Bihar), but limit the regulation of APMCs to the physical boundaries of the markets under their control. The Ordinances may result in increased competition, which may also make APMCs more efficient in providing cost-effective services for marketing.<sup>[12]</sup> Further, for farmers selling their produce outside the APMC markets, the prices prevailing in APMC markets can serve as a benchmark price, helping in a better price discovery for farmers.

**Gramin Agriculture Markets: The Standing Committee noted that availability of a transparent, easily accessible, and efficient marketing platform is a pre-requisite to ensure remunerative prices for farmers.<sup>1</sup> Most farmers lack access to government procurement facilities and APMC markets.<sup>1</sup> Small and marginal farmers (who hold 86% of the agricultural landholdings in the country) face various issues in selling their produce in APMC markets such as inadequate marketable surplus, long-distance to the nearest APMC markets, and lack of transportation facilities.<sup>1</sup> The average area served by an APMC market is 496 sq. km., much higher than the 80 sq. km. recommended by the National Commission on Farmers (Chair: Dr. M. S. Swaminathan) in 2006.<sup>1</sup>**

The Standing Committee (2018-19) noted that Gramin Haats (small rural markets) can emerge as a viable alternative for agricultural marketing if they are provided with adequate infrastructure facilities. It recommended that the Gramin Agricultural Markets scheme (which aims to improve infrastructure and civic facilities in 22,000 Gramin Haats across the country) should be made a fully funded central scheme and scaled to ensure presence of a Haat in each panchayat of the country. The central government has proposed development of basic infrastructure in Gramin Haats through the National Rural Employment Guarantee Scheme and of marketing infrastructure through the Agri-Market Infrastructure Fund.<sup>[13]</sup> The Fund will be set up by NABARD to provide Rs 1,000 crore to states at a concessional interest rate for development of marketing infrastructure in Gramin Haats.<sup>13</sup>

[1]. [Report No. 62, Standing Committee on Agriculture \(2018-19\): 'Agriculture Marketing and Role of Weekly Gramin Haats'](#), Lok Sabha, January 3, 2019.

[2]. Report of Committee of State Ministers, In-charge of Agriculture Marketing to Promote Reforms, January 2013, <https://dmi.gov.in/Documents/stminprreform.pdf>.

[3]. [Model Agricultural Produce and Livestock Marketing \(Promotion and Facilitation\) Act, 2017](#), Ministry of Agriculture and Farmers' Welfare, April 2017.

[4]. [Model Agricultural Produce and Livestock Contract Farming \(Promotion and Facilitation\) Act, 2018](#), Ministry of Agriculture and Farmers' Welfare, December 2017.

[5]. "High Powered Committee of Chief Ministers constituted for 'Transformation for Indian Agriculture'", Press Information Bureau, NITI Aayog, July 1, 2019.

[6]. [The Farmers' Produce Trade and Commerce \(Promotion and Facilitation\) Ordinance, 2020](#), Ministry of Agriculture and Farmers' Welfare, June 5, 2020.

[7]. [The Essential Commodities \(Amendment\) Ordinance, 2020](#), Ministry of Consumer Affairs, Food and Public Distribution, June 5, 2020.

[8]. [The Farmers \(Empowerment and Protection\) Agreement on Price Assurance and Farm Services Ordinance, 2020](#), Ministry of Agriculture and Farmers' Welfare, June 5, 2020.

[9]. "PM chairs Cabinet Meeting to give historic boost to Rural India", Press Information Bureau, Ministry of Agriculture and Farmers' Welfare, June 3, 2020.

[10]. [Investment in Agricultural Marketing and Market Infrastructure – A Case Study of Bihar](#), Research Report, National Institute of Agricultural Marketing, 2011-12.

[11]. [Conference of Agriculture Ministers of the States on Model Acts](#), Ministry of Agriculture and Farmers' Welfare, July 8, 2019.

[12]. [F.No. 26011/3/2020-M.II.](#), Agricultural Marketing Division, Ministry of Agriculture and Farmers' Welfare, June 5, 2020.

[13]. [Report No. 8, Standing Committee on Agriculture \(2019-20\): Action taken by the government on the report 'Agriculture Marketing and Role of Weekly Gramin Haats'](#), Lok Sabha, December 12, 2019.

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