Farm Legislations and Minimum Support Price – Mohan V. Katarki, Senior Advocate, Supreme Court of India (*E-mail: mohankatarki@gmail.com*)

The Parliament has hurriedly enacted following two legislations which relate to the marketing of farm produces grown by the farmers or agriculturists in their farm land:

1. Farmers' Produce Trade & Commerce (Promotion & Facilitation) Act, 2020 (FPTC)
2. Farmers (Empowerment & Protection) Agreement on Price Assurance & Farm Services Act, 2020 (FAPAFS)

The marketing of farm produces became necessary with surplus food production, production of commercial crops like cotton and urbanisation in the middle of 19th century. The Central Government in India proposed a model law for organising the Agriculture market as Agriculture Produce Market Committees (APMC) in early 1960s. The States, barring few, have accordingly enacted the laws constituting the APMCs, which have come to assume monopolistic status in trading of farm produces unless exempted like sugarcane or horticulture produces. APMC have drawbacks but, these are with regard to the failure of administration in the APMCs. But, the APMCs are democratic bodies and have mechanism to redress the grievances of farmers.

However, the FPTC has knocked out the bottom of APMCs by permitting free trading outside the APMC market yards. The second legislation FAPAFS regulates the farming agreement between farmer and purchaser or corporates called as sponsors. The FPTC sets up parallel system for trading in farm produces. As a consequence of the creation of such parallel market system, the monopolistic status of APMC market yards, wherever they exist under the State Acts, has been broken or surgically tinkered. The FAPAFS regulates the farming contract between the trader and farmer on an assumption that free trading outside APMC is permissible under the FPTC. Sec 5 of FAPAFS mandates payment of agreed price as guaranteed price, but it is not the same as Minimum Support Price (MSP).

The farmers across the nation, particularly in Punjab and Haryana, have been agitating questioning the wisdom of enacting these legislations[1]. The farmers say, these legislations would eventually lead to colonisation of farming community by corporates who have money power to extract contracts from the farmers by lending money as credit or as advance payment. In this background, the farmers are alternatively demanding for legal guarantee of minimum support price (MSP) as a fall back.

The MSP was introduced before 1970 by Central Govt by its executive orders to protect farmers from the wild price fluctuations. However, all farm produces didn't come under the MSP regime. At present there are 23 farm produces like wheat, Rice, Ragi etc which are covered by MSP. But, the MSP was and is not a legal guarantee. Its not strictly binding on the States. Even then, the State Govt's banked on MSP and enforced it on APMCs by setting MSP as floor price. If there were no takers at MSP rates in APMC, the Central Govt bought farm produces under the procurement scheme for distribution under the Public Distribution System (PDS). MSP worked in tandem with PDS. The farmers over a time have considered, MSP is their legitimate expectation. However, the Central Govt appears to say that if MSP hasn't been a legal guarantee so far, why it should be now guaranteed. But, as discussed above, the argument of the Centre doesn't hold water since the MSP was enforced hitherto on APMCs as floor price by the State Governments, which can't be done after these two legislations are enacted as, they create parallel free market outside the APMC. The proponents of legislation cite Sec 5 which talks of "guaranteed price". Sec 5 reads as below:

"5. The price to be paid for the purchase of a farming produce may be determined and mentioned in the farming agreement itself, and in case, such price is subject to variation, then, such agreement shall explicitly provide for —

(a) a guaranteed price to be paid for such produce;
(b) a clear price reference for any additional amount over and above the guaranteed price, including bonus or premium, to ensure best value to the farmer and such price reference may be linked to the prevailing prices in specified APMC yard or electronic trading and transaction platform or any other suitable benchmark prices:

Provided that the method of determining such price or guaranteed price or additional amount shall be annexed to the farming agreement."

The "guaranteed price" is nothing but price agreed to be paid by purchaser despite variations in price. It's not same as MSP. If MSP had been prescribed in Sec 5, then purchaser or corporates couldn't have entered into farming agreement with farmers to sell his produces at a price less than MSP. Therefore, the farmers forced by indebtedness, etc are likely to be compelled to sell their farm produces at a lower price dictated by the purchaser who are corporate known as commodity houses. This exploitation is likely to occur in buyers market or in the market where there is less demand for farmers products. Therefore, the fears of farmers are not misleading fears. The farmers demand for prescription of MSP under the law is a legitimate demand. The fact that it was not prescribed hitherto has no substance. Because, as stated above, the MSP fixed by the Central Govt by administrative order was implemented by the State Govt through APMC which was the exclusive place to trade the farm produces. When APMC market is knocked out and outside trading is permitted by giant corporates under the new legislations, legal guarantee of MSP becomes necessary to protect farmers from exploitation. The present administrative orders fixing MSP have no legal validity. The orders cannot overrule the farming agreement freely entered into by farmers though under compelled conditions of indebtedness, etc.

On the question whether Parliament has necessary competence to enact both the legislations FPTC and FAPAFS, the answer it seems, is in the negative prima facie.

In conclusion, the legislations which were passed hurriedly in Parliament do not augur well for democracy. The farmers have fears of exploitation and colonisation by corporates in the name of free trade. Their demand of minimum support price is legitimate. The APMCs despite draw backs have not been unfair to farmers.

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