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# Can we plan Agricultural Liberalization a bit more?

An Investigation into the Legislative Design of the Farm Acts &  
their implications

## **Policy Brief By:**

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## Introduction

The three agricultural Acts - The Farmers' Produce Trade and Commerce (Promotion and Facilitation) (FPTC) Act, 2020, The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services (FAPA & FS) Act 2020, and The Essential Commodities (Amendment) (ECA) Act 2020 were introduced in the Parliament on 14<sup>th</sup> September and received the President's assent on the 27<sup>th</sup> September 2020. The Acts are aimed at liberalising the Indian agricultural sector and to make the idea of 'One Nation, One Market' a reality. It hopes to attract private investments, remove middlemen from the system, and give farmers better prices for their produce.

The FPTC Act allows the farmers to sell their produce outside the APMC yards and no fees, cess or tax shall be levied by the APMCs or State Government on these transactions. It is expected to bring "freedom of choice" to the farmers to sell their produce anywhere in the country at a higher price. The PAFS Act provides for and facilitates the farmers to enter into contract farming agreements with "sponsors" at predetermined mutually agreed prices. The Government hopes that the reforms would pave way for private investments in the agricultural sector. With the amendment to the ECA, the central government deregulated the storage and distribution limit of agricultural food stuff. The stated objective behind ECA Act is to boost immediate investment in the agriculture sector which in turn requires an easing of regulatory interference in doing business.

However, the acts have not been successful in taking the stakeholders into confidence. The enactment of the bills despite the objections from opposition and criticisms on lack of stakeholder involvement have ignited fears and suspicion.

The farmers fear that the bills would lead to corporatisation of agriculture and impact the procurement of agricultural produce by the government at Minimum Support Price (MSP). However, a 2015 Report of the High Level Committee on FCI, headed by Shantha Kumar observes that only 6% of the farmers sold their wheat and paddy to any procurement agency in the previous years.<sup>1</sup> Farmers argue that without adequate support systems from the government they will be devoid of even minimal bargaining power and thereby affecting their livelihood adversely.

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<sup>1</sup> 2015 Report of the High Level Committee on FCI, available at <http://bit.ly/RHLCRA>, as accessed on: 16th February, 2021.

The leeway given to entities with larger capacity on stock limit, through the Amendment of section 3 of the ECA has raised concerns regarding the food security in the country. Many fear this might lead to hoarding and subsequent price rises. Farmers organisations maintain that the three acts have not incorporated the recommendations of the M.S. Swaminathan Committee Report of April 2006, which according to them is more meaningful for farmers empowerment. They maintain that certain provisions in the impugned Acts are also in direct contradiction to recommendations of Report.

While the thrust for ease of doing business and market competition are in resonance with international commitments at the WTO and the like; it is important to secure the interests of domestic farmers. This is not only for the benefit of better market performance but also for safeguarding the strategic interests of the nation in terms of food security, real estate and land holdings. Above all, it is a matter of the maintenance of civic trust. The focus on ease of doing business in the present legislations, if tended with the agenda of empowering farmers, will be of larger national interest. We provide some suggestions in this direction.

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

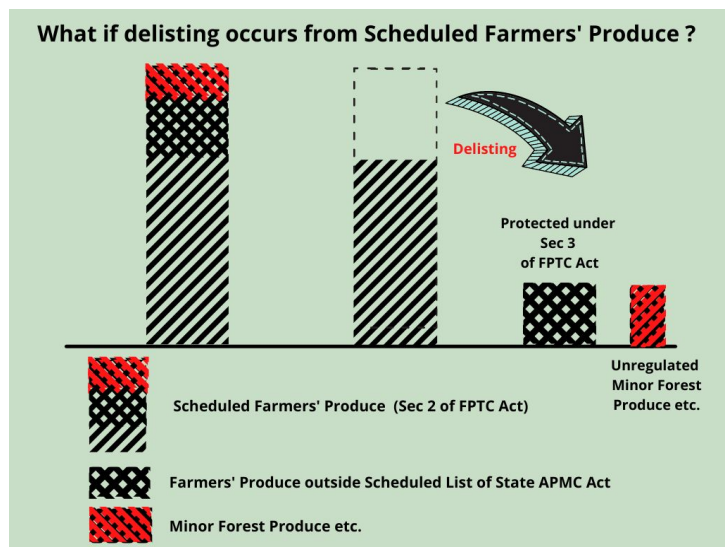
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a) **Definitional Issues in the terms like 'Farmer' and 'Farmers' Produce':** The term 'farmer' as defined in the Act includes any individual engaged in the production of farmers' produce and registered organisations or societies, even with no operational land holdings. This is in one way too broad but on the other does not include informal arrangements or small scale partnerships of farmers. The definition of a farmer should be restricted to those having operational agricultural land holdings as mentioned in the Agricultural census.

Similarly farmers' produce and scheduled farmers' produce are two different terms used throughout the Act. Although these terms are clearly defined within the sections, this is quite contrary to the casual perception wherein scheduled items are the sub-set of non-scheduled items. The scheduled farmers produce has a wider scope and includes several items like fruits, vegetables, tendu leaves, flowers, bamboo, honey, etc. other than the farmers produce. This will result in a scenario wherein trade in certain produce will not get the benefit of the provisions in the present Act which are applicable only to scheduled



farmers' produce, in case of delisting. This is particularly a cause of concern when it comes to minor forest produce



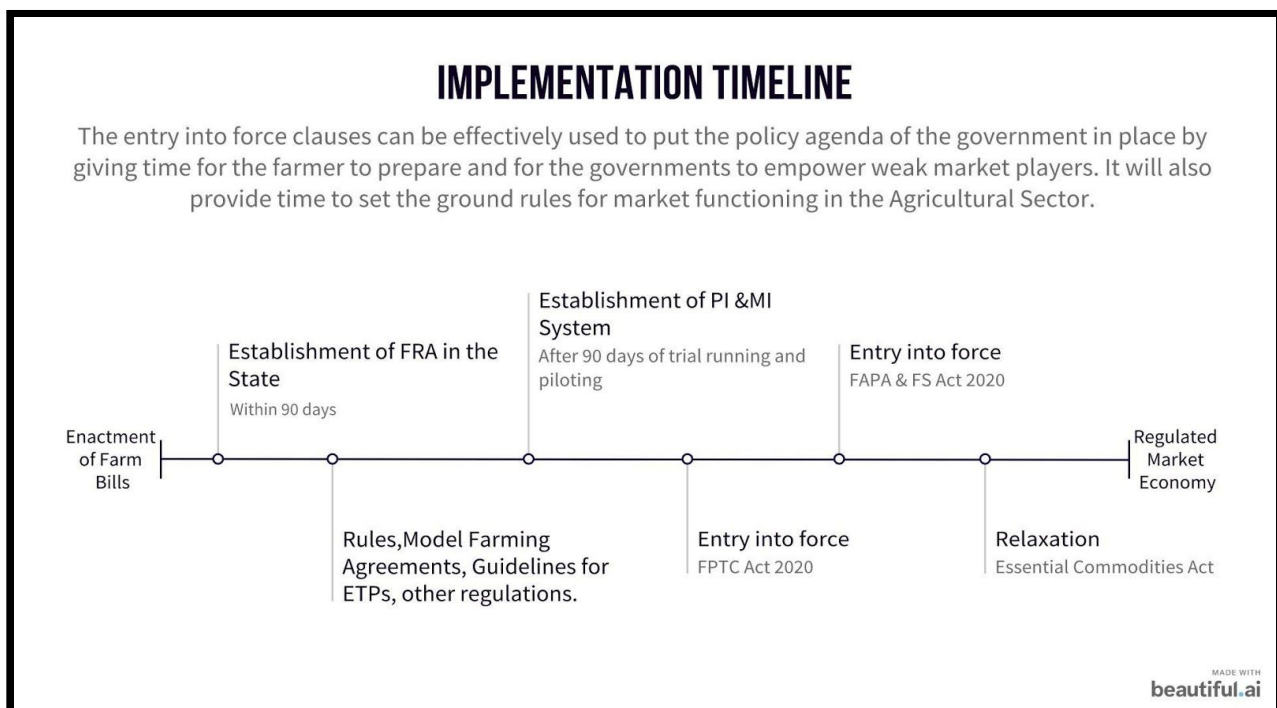
which is included in the scheduled farmers produce and not in the definition of farmers produce. If delisting of minor forest produce takes place, it would pave way for an unregulated trade in the same. Therefore it is imperative that the definitional inconsistencies are resolved. This can be done either by providing for clear guidelines in case of such delisting or by redefining the farmers produce to include any such produce which as of the commencement of the Act exist as a scheduled farmer's produce. This would enhance the ambit of farmers' produce and remove any inconsistencies that may arise out of the present categorisation.

**b) Electronic Registration of Traders:** The registration of traders engaging with the farmers produce, both scheduled and non scheduled is important in order to have

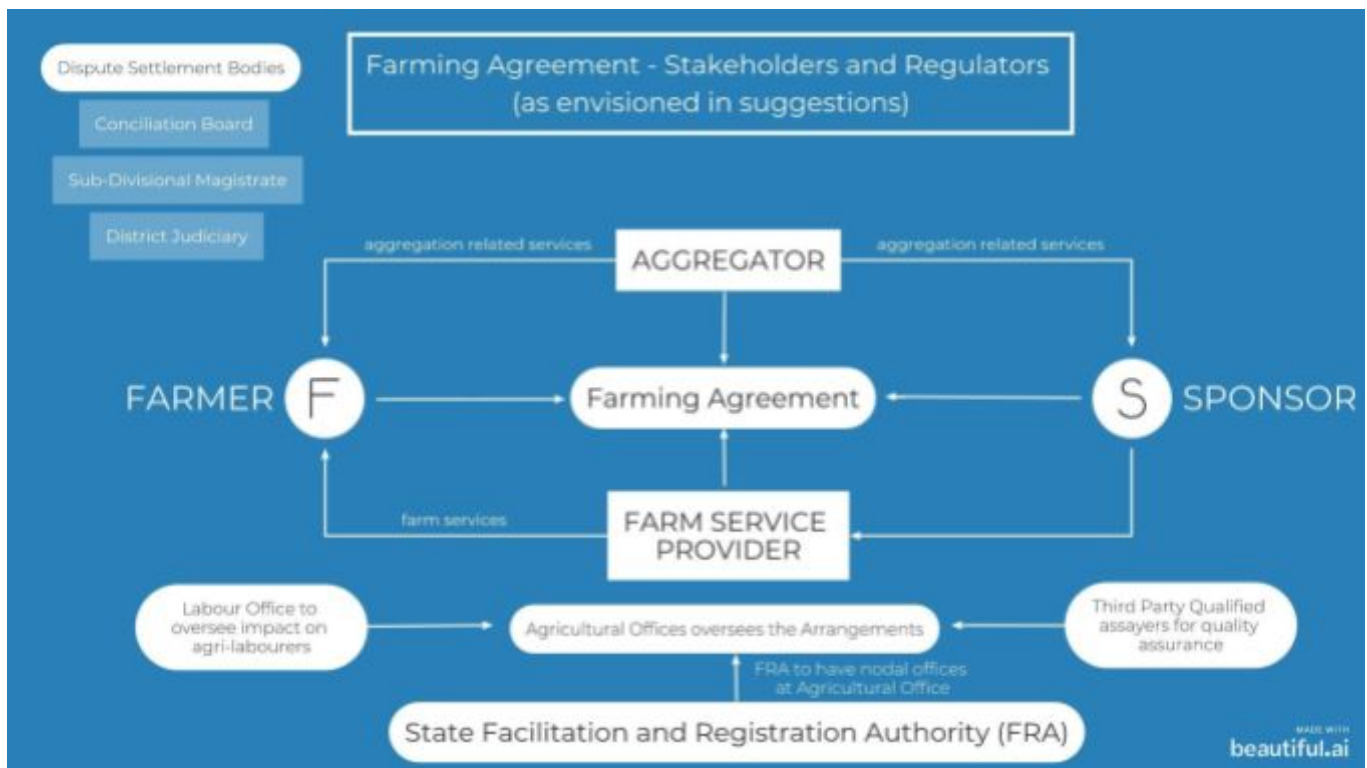
an effective regulation of the section by the government, if the need arises. Say for example, at the issuances of essential commodities notification or sanitary measures. The Central Government must therefore prescribe and maintain a system for electronic registration of traders, consistent with its e-Governance policy. The present Act does not mandate such registrations.

**c) Entry into Force of the Act:** The Act should essentially come into force only after the Central Government has set sufficient safeguards and issued guidelines for the functioning of Electronic Trading Platforms (ETPs) and also after piloting the Price Information and Market Intelligence System (PI & MI). Two important reasons compels us to take time in the rolling out of market economy: (1) timely empowerment of farmers for participating in the market with courage and confidence and (2) time needed for strategic placement of regulatory systems such that government interventions for food security or other emergencies are effective.

In this regard, adopting an implementation timeline will provide a defined way forward for effectuating the three farm acts in a coherent and meaningful manner. The



gestation period between the enactment of farm bills and enforcement of the farm bills must be utilised. It is desirable that the FPTC Act 2020 come into force before the FAPA & FS Act 2020 enter into force. This will enable the stakeholders, especially farmers, FPOs or Agrarian



societies to experiment with their own electronic trading platforms or warehousing and logistics businesses.

**d) Dispute Resolution Mechanisms and Access to Justice Concerns:** Section 8 of the Act is forward looking in terms of application of conciliation as the primary dispute resolution mechanisms in the market. However removal of local judicial bodies from both the adjudication and the appellate stages makes de-judicialization excessive. Requiring farmers or other small scale stakeholders to approach higher judiciary for all necessary interventions is a serious abridgement of the access to justice. Similarly, recourse against Electronic Trading Platforms placed in the hands of the Central Government Level (See Section 10 of the Act) seems distantly located. Involvement of lawyers and judicial officers should be seen from the requirement of fairness and not from the point of ease of doing business. There are several drafting concerns in the Section 8 such as:

*i. No power to dismiss:* The present text makes it ambiguous such that there is no explicit mention of power for authorities to dismiss disputes or contraventions once taken cognizance of.

*ii. Mutually exclusive alternatives:* Several forms of orders are given under Section 8(7) and they are mutually exclusive. So in case, the SDA wants to order for recovery of money along with imposing a penalty, it cannot be done, only either of them is possible.

*iii.) Uncontrolled discretion of powers to the SDM:* Section 8(7)(c) provides discretionary power to the SDM to restrain the trader from carrying on with his trade to such period as it may deem fit, but without any clear cut guidelines. It must be kept in mind that powers granted can abridge the fundamental right of the trader guaranteed under the Constitution of India.

### **The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (FAPA & FS Act)**

**a) Soil Health Restoration and Responsibilities of the Parties to Farming Agreement:** The FAPA&FS Act misses the possibility for addressing the issues of the use of genetically modified seeds, fertilizers, mechanized agrarian practices which may be adopted by the farmers at the instance of sponsors, farm service providers leading to deterioration of soil health and ground water table. Therefore, we prescribe pinning liability according to the 'polluter pays' principle in our suggested texts.

**b) Mitigating the Risk of Structural Unemployment:** The FAPA&FS Act doesn't provide any protection to livelihoods of the sole dependants viz., agricultural labourers and sharecroppers in case a farming agreement entails a change in the agricultural practices of farmer's land with more mechanisation and introduction of new technologies. This is crucial as these dependents are not

part of the farming agreement and in the absence of any protection, the entire economy may get affected.

**c) Model Agreements and Mandatory Clauses:** The FAPA&FS Act fails to provide a template of the model farming agreement, which is important for farmers who will be exposed to the legal professionals of the sponsor or third party. The current indefiniteness of the act may give the sponsors and third party greater leeway to exploit the farmers. Hence, a model farming agreement with some mandatory clauses providing for welfare of the Farmers and the public must be framed by the State Government in consultation with the Central Government.

## “Use of Native Language of the Farmer must be mandated for Farming Agreements.”

**d) The Excessive Section 7 of the Act:** Section 7(1) of the FAPA&FS Act attempts to reduce the role of APMC and strengthens private agricultural marketing in the long run. However, the text of clauses 1 and 2 of the section not only allows for commercial private hoarding of agricultural produce but also impairs the government from acting even in the extraordinary circumstances as identified by the Essential Commodities (Amendment) Act 2020. The net impact will be zero governance in the agricultural sector. This brings in a gross concern not only for the farmers but also for the consumers at times of price rise or food inflation.

**e) Guaranteed protection mechanism:** A protection clause shall be guaranteed in the farming agreement for both the farmers and sponsors via insurance or credit assurance by the Central or the respective State Government, thereby ensuring definitive support to the parties of the agreement in case of adversaries. It must also be noted that the burden of premium does not fall on the farmers, especially the small and marginal farmers.

**f) Realigning Quality Assessment Mechanisms:** The FAPA&FS Act introduces a new player viz., third party assayers in the contractual farming ecosystem to determine quality, grade and standard of farming produce. It is not a prudent step as there are high chances of exploitation of farmers at the hands of collusion between sponsor or third party and third party assayers, in the absence of

government regulation. It is therefore desirable that the State Governments, under the supervision, direction and control of QCI, set up third party assay centers at village level .

**f) Overhauling Registration Authority:** Considering the importance of farming agreement, there is a need to assist the parties in formulating the agreements as per the prescribed guidelines of the State Government. This necessitates, widening the mandate of the proposed Registration Authority by transforming it to Facilitation and Registration Authority (FRA), thereby including functions w.r.t. facilitation and registration of farming agreements. The role, responsibilities and powers of the FRA are detailed in the suggested text of Section 12.

### Essential Commodities Amendment Act (2020)

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The Essential Commodities Act was first brought about in 1955. It was a measure to overcome the food scarcity challenges faced within the country during that period. As depicted in the graph the situation has changed in recent years. The production of rice, wheat and pulses, are seen as growing multi-fold, considering which the government has proposed an open-market system. The system had been suggested to encourage the export potential of the agriculture sector.

To attract more investments within the sector the government had suggested private involvement in the supply chain of commodities with no limits on stockpiling with limited exceptions like in the case of natural calamities, wars or in the case of an unprecedented increase in prices based on certain price triggers. While this is a necessary evil which needs to be adopted to try out a full fledged market mechanism in the agrarian sector, the legislative mechanism for the same cannot attempt to exclude farm produce under the agreement from regulatory interventions in total.

### On the Question of MSP

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MSPs serve two purposes, one, it assures farmers to get the price above the Cost of Production (CoP), which allows agriculture sustenance and second, it makes agriculture produce available to the government for sustaining the food security of the country. In case, the agriculture sector is opened completely to the market, two risks can take

place, first, the supply side distortions may induce food price inflation and the second, weak market capabilities of the farmers leading to their loss of land and life in the long run. This is because the contemporary agriculture sector has a lot of externalities. On the other hand, declaration of MSPs may sabotage the free market benefits which may be accrued to the farmers as well. This leads us to a logical deduction that the power of the Government to declare MSPs or to determine prices, when circumstances demand, must be legislatively established. The governments must also be legally responsible to build capabilities to intervene in markets when food price inflation soar high. However, the question of MSP declaration and determination is not included in the present suggestions for want of economic data.

**Annexures:**

1. Memorandum of Recommended Changes on FARMERS' PRODUCE TRADE AND COMMERCE (PROMOTION AND FACILITATION) ACT, 2020.
2. Memorandum of Recommended Changes on THE FARMERS (EMPOWERMENT AND PROTECTION) AGREEMENT ON PRICE ASSURANCE AND FARM SERVICES ACT, 2020.
3. Memorandum of Recommended Changes on THE ESSENTIAL COMMODITIES AMENDMENT ACT, 2020.

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