

Report on “Comments, Views and Suggestions on the three Farm Reform Acts, 2020



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To,

The Committee on Farm Laws,

Appointed by the Supreme Court of India.

Dear all,

We write to you on behalf of the Kautilya Society, a collaboration between students of National University of Juridical Sciences (NUJS), Kolkata and Vidhi Centre for Legal Policy, New Delhi. Student members of the Kautilya Society seek to actively participate in legislative processes to help in the making of better laws and to cultivate an interest in participating in legislative research and policy-making. To this effect, we have endeavored to undertake a critical study of the 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 ('the Farm Laws') and attached herein our comments and suggestions to the same in the nature of this Report.

The first part of this Report contains the Executive Summary, i.e. a glance-through of all the recommendations in this Report. The second part contains a detailed explanation of the various recommendations we make based out of justifications in law and policy.

We realized that several stakeholders have already reached out to you with respective comments. While writing this report, we have tried our best to not raise concerns which have already been raised earlier. However, we felt that it is necessary to flag concerns with respect to a few provisions which continue to remain in the final draft of the Bill.

We sincerely hope that the Committee gives us an opportunity, if needed, to appear before it to justify the need to consider the inclusions and modifications we have suggested in this Report. We also hope that the Committee actively considers the recommendations that we make in this Report while finalizing the recommendations to be made to the Supreme Court of India.

Sincerely,

Kautilya Society,

National University of Juridical Sciences (NUJS), Kolkata.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
DETAILED COMMENTS.....	5
I. The Farmers’ Produce Exchange and Commerce (Promotion and Facilitation) Act, 2020.....	5
i) The Dispute Resolution Mechanism	5
ii) Concerns Regarding the APMC.....	7
II. Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020	9
i) Registration of Contract Farming Sponsor.....	9
ii) Include Section 4 (5) specifying the consequences of non-fulfilment of Quality Standards	11
iii) Include a Quantity-specific provision in the Price Assurance Act.....	11
iv) Allowing Appeals to the District Court.....	13
v) Incorporate a Mandatory Model Contract.....	14
vi) Model Agreement.....	16
III. Essential Commodities (Amendment) Act, 2020	34
i) Price Regulation Circumstances.....	34
ii) Exclusion of Other Essential Commodities in Amendment Act.....	34
iii) Imposition of Stock Limit	35
iv) Disincentivize farmers from investing in storage and warehouse facilities.....	33

EXECUTIVE SUMMARY

The Farmer's Produce Exchange and Commerce (Promotion and Facilitation) Act, 2020

- **The Dispute Resolution Mechanism** provided in the Act poses issues related to the structure of the conciliatory board prescribed under the Act. Furthermore, it has a tendency to discourage the use of Alternative Dispute Resolution. We recommend that a fixed conciliatory board be appointed for each state under which panels may be set up.
- We recommend that a **Farm Disputes Tribunal** be set up to exclusively deal with disputes arising out of farmers' agreements. It must be ensured that along with judicial members, the disputes tribunal may compose of farmers and stakeholders from the agricultural community.

Farmers' (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020

- We recommend that **registration under the Act be made mandatory for sponsors** along with provision for registration of farming agreements as is made mandatory under the Act. This shall serve as a means to create a depository of all the entities involved in farming contracts and shall save farmers from exploitation by the sponsors who may not pay them owing to any reasons whatsoever.
- We have recommended that **quality assurance be made a mandatory clause** in farming agreements and consequently, one Clause 4(5) be included to protect parties from non conformity with quality standards.
- We recommend that **along with standards for quality of produce, time of supply and time for the same, standards for quantity also be made a factor for agreements** under the act.
- It is also recommended in this report that apart from the dispute resolution mechanisms provided under the Act, appeals to the district courts may be allowed.
- We recommend that a model contract be annexed with the statute to allow for assistance to the farmers who may not be as legally equipped as the sponsors. We have also added a copy of a suggested model agreement in this report.

Essential Commodities (Amendment) Act, 2020

- We recommend that the **situations for price regulation** as provided in Section 3 of the Act may be widened to include more natural events. For example, the locust attacks that occurred in 2020 may not fall in the ambit of Section 3 as it is.
- While the Amendment Act only accounts for regulation of foodstuffs, the draft **section should account for regulation of other essential commodities**, in manner as legislature deems fit.
- It is also suggested that the imposition of stock limits may be done in a more effective manner. The existing stock limits provided by the Act are extraordinarily high and it is recommended that varied stock limit thresholds may be adopted for produce ranging from regular products to exotic products.

DETAILED COMMENTS

I. THE FARMERS' PRODUCE EXCHANGE AND COMMERCE (PROMOTION AND FACILITATION) ACT, 2020

i) The Dispute Resolution Mechanism

The Farmers' Produce Exchange and Commerce (Promotion and Facilitation) Act, 2020, grants a buyer the right to directly trade with the farmer's in the country. This implies that a farmer has the liberty to engage with buyers in intra-state and inter-state trade, beyond the earlier restrictive structure.

In Chapter 3, the Act provides a conflict settlement procedure. As per Section 8 which covers the "dispute resolution mechanism for farmers," in the event of any dispute arising out of a transaction between a farmer and a trader," the dispute shall be resolved by the Conciliation Board appointed by the Sub-Divisional Magistrate. The Conciliation Board will have a chairperson appointed by the SDM and two to four other individuals. The appointed individuals except the chairperson will represent the contested parties. These other members shall, on the advice of the contesting parties, be appointed by the Chairperson and, in the event that the parties fail to make recommendations within seven days, the SDM can directly nominate them. An appeal can be made if the conciliation board doesn't reach a decision within 30 days as per Section 8(5) of the Act.

In case of electronic trading platforms, Section 9 of the Act allows Government officials to take cognizance and pass orders within a 60 day period. Accordingly under the Act, there is a complete ban on approaching Civil courts as per section 15 of the Act (similar to s. 15 of the Contract farming Act). Moreover, protection from prosecution and all other ancillary aspects have been accorded to the executive under Section 13 of the Act.

Accordingly, the control entirely lies with the executive with almost no judicial involvement in the dispute resolution mechanism. The appointments of the President and other members is carried out by the Executive Bodies. Even if the appointment is made on the advice of the parties, the final verdict rests with the SDM, and he is the one with the final say in the matter. The appeals in these disputes are also heard by executive authorities.

The current procedure completely overrides the idea of separation of powers. As per the laws, the only possible judicial resolution is by means of a claim under Articles 226 and 32 of the Constitution. However, because of financial constraints, farmers may be unable to approach higher courts and hence would have no possible solution.

The practice of giving decision making authorities to executive bodies is not uncommon; however, such situations mostly do not require deep legal or on the ground knowledge. For instance; Section 167 of the CrPC only allows temporary arresting and remand powers to the executive magistrate. Further, As per Justice Nagmuthu, in *M.Venugopal v. The District Magistrate*, situation which involve both law and facts must be adjudicated only by judicial authorities.

Accordingly, the currently ambivalent structure of the Act is creating two major problems with respect to Dispute resolution.

A. The issues:

a) The conciliation board structure:

The issues with the conciliation board's structure are threefold:

- i) There exists no set requirements or standards for the appointment of the Chairman, which places the aggrieved party in a very poor position. There is no assurance as to the degree of experience and competence of the only impartial individual on the Conciliation Board.
- ii) There is no consistency with respect to the appointment of the chairman. Every dispute shall see the appointment of a new chairman which further increases the scope for executive influence.
- iii) The board shall consist of equal number of parties from both sides; however, with only one person deciding the matter entirely brings in arbitrariness. Further, all parties are appointed by an executive body which reduces the influence of the farmers in the entire process.

b) Reduces accountability and discourages use of ADR:

- i) Previously, dispute resolution was governed by APMC authorities or the Director of Agricultural Marketing appointed by the Government under the Model AMPC Act, 2003 ('Model Act, 2003') and the Model Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Act, 2017 ('Model Act, 2017').
- ii) The arbitration procedure was earlier governed by the APMC authorities, who were, in several respects, conscious of the farmers' problems. This a significant point of difference between the previous laws and the newly implemented farm laws. The new act enforces overarching bureaucracy while its appointees have little connection with the farmers and can barely understand their problems.
- iii) As codified in Section 67 of the Arbitration and Conciliation Act, 1996 ("the A&C Act"), the function of conciliation and conciliators is to assist parties in an objective way. However, there is a high possibility that the decisions of the conciliators in the current structure may favor big institutions and companies and/or corporations because of the overarching bureaucratic control and lack of understanding of the farmers problems. This may in fact even discourage the use of alternate dispute resolution.

B. Recommendations:

i) Dispute resolution committee

A fixed Conciliation Committee should be set up for every state in which panels may be determined for every district, or some other division, as deemed fit to ease out the procedure, and facilitate a more structured dispute resolution process.

In order for the committee to function smoothly there are certain basic requirements:

- a) The panels must not be chosen arbitrarily.
- b) There should be no overarching body controlling the appointment process.
- c) The board members must have certain qualifications. Comparisons can be drawn with the [2009 land distribution Act of China](#) where the conciliation board had a number of member's from farmer's organizations.
- d) Further, a fixed term could be set for the conciliation board members. Replacements will ensure against corruption and a standard period will cut out job security concerns.

ii) *Farm Disputes Tribunal*

For swift and cost-efficient settlement of farmer disputes, a Farmers Tribunal could be set up. It is necessary to ensure that, in addition to the judicial members, there are farmers and other members who have experience and knowledge of agriculture and related issues as expert members on the tribunal.

As the Executive Magistrates don't always have the required legal acumen, setting up a separate tribunal in itself becomes extremely necessary. As their primary work will be to settle these conflicts and as it will have judicial representatives well prepared to address complicated matters. Additionally, the tribunal could be given a shorter time frame than general proceedings which will ensure both effective and efficient orders.

ii) **Concerns Regarding the APMC**

The Farmers' Produce Trading and Commerce Act (FPTC), 2020 enables farmers to sell and purchase their produce to any trader at any place in the country- within the premises of APMC markets or outside its mandated area. The Act also permits transactions through electronic platforms to promote e-commerce in agricultural produce. Along with the other two laws the Act aims to make agri- marketing more competitive and efficient by bringing in larger numbers of buyers of agri- produce in direct contact with the farmers in the hope that it will reduce the profit margins of the intermediaries and enable farmers to get more remunerative prices. The Act also intends to improve the efficiency of the existing APMC markets and increase the bargaining power of farmers vis-à-vis the trading agents in these markets by curbing their rent seeking behavior. It also tries to do away with the attempt of some states to turn public procurement of grains into a major source of revenue generation at the cost of the public (central government) exchequer.

The APMC Regulations were brought in initially to remove malpractices in marketing of agricultural products and help free the farmers from the exploitative practices of middlemen and mercantile capital. The APMC Act mandates that the sale/purchase of agricultural commodities be carried out within specified marketing areas and producer-sellers or traders pay the requisite market fee, state levies and commissions for the commission agents; the charges are to be levied irrespective of whether the sale/purchase took place within the APMC premises or outside it. Up until 1991, APMC mandis did a good job in handling the sale/purchase of agricultural produce as its reach expanded in many of the states. Over time,

however, its growth failed to keep pace with expansion in and diversification of agricultural production in the country. By 2006, APMC mandis were able to handle not more than a quarter of the agri produce in the country. Since, APMC regulations didn't allow farmers to sell outside of the mandis to such buyers as food processors, agri- business entities and such others, their dependence on middlemen, once again, increased considerably giving rise to a system of interlocked transactions benefitting the middlemen while denying the farmers the choice and consequent benefits of selling their produce in a more competitive marketing system.

Besides, over the years, some states, notably Punjab, Haryana, Rajasthan, Gujarat, Arunachal Pradesh and West Bengal have turned APMC mandis as sources of revenue generation by charging exorbitant levies on agricultural produce transaction. In these states total mandi charges vary from 5 to 8.5% of the total sales, the highest being in Punjab followed by Haryana. To escape farmers protest, they have made the buyers, especially a public undertaking, the Food Corporation of India (FCI) which buys wheat and rice for feeding the Public Distribution System in the country, to pay for these charges. In Punjab and Haryana, mandi charges for the FCI for its wheat and non-basmati rice procurement are four to six times of the charges for basmati rice purchased by private players. A fair idea of the devious ways in which these states make money out of sale and purchase of agricultural produce can be had by looking at the operations of other states which also have APMC Acts.

Out of the total of 25 states with APMC Acts, 12 states levy no commission under the Act on notified crops, and service charges, such as mandi fees on major crops, vary from zero percent to 1% percent in nine states, and 2% in two others namely Madhya Pradesh and Tripura. For The other category of 5 states, service charge for mandis is 1% percent of the value of sales and commission varies between 1 to 2%. In Karnataka the total charges are slightly higher at 3.5%. It is obvious that, with marginal adjustment of charges of all types, majority of states can keep the logistics cost of trading at the necessary minimum. Thus, the problem is largely confined to Punjab, Haryana and western UP where bulk of the public procurement takes place. High user charges in these states not only results in heavy burden on the finances of the Center fueling its fiscal deficit but also increases substantially the logistics cost of domestic produce thereby reducing trade competitiveness. Worse, the money thus obtained by these states are spent in providing free electricity and water to farmers which has made agricultural operations unsustainable in these regions. Free power has enabled farmers of these states to indulge in water guzzling crops such as rice, wheat and sugarcane (in Western Uttar Pradesh (U.P) leading to serious depletion of ground water.

Additionally, the extensive opposition for the bills is caused by some definitive reasons. The reason lies in farmers' interest getting aligned with the marketing/procurement practices prevalent in most regions. Wheat- rice production cycle in the region with free power and extensive procurement by the Food Corporation of India at Minimum Support Prices has become extremely lucrative for the farmers. The farmers are unwilling to support a marketing reform for fear that it may lead to a fall in their income. In the northern region, reforms in the sphere of production that give farmers an equally profitable alternative crop cycle have to precede any marketing reform. Maze, at current productivity level, could be one such alternative; suitable R&D can make some of the oilseeds such as soybean, groundnut and mustard as probable alternatives to rice cultivation. There is demand for these crops in the country as we import large quantities of edible oil. Extensive R&D and extension services along with a financial package to incentivize farmers to change their crop cycle may do the

trick. Meanwhile, the marketing reforms envisaged in the three laws could be implemented in the rest of the country. The government should not insist on one size fits all.

II. FARMERS (EMPOWERMENT AND PROTECTION AGREEMENT) ON PRICE ASSURANCE AND FARM SERVICES ACT, 2020

i) Registration of Contract Farming Sponsor

Section 12 of the Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020 ('Price Assurance Act') stipulates that the State Government:

“may notify a Registration Authority to provide for electronic registry for that State that provides facilitative framework for registration of farming agreements”.¹

However, a similar provision has not been made for the registration of a Sponsor (defined as a person who has entered into a farming agreement with the farmer), which is a surprising departure from the Central Government's previous attempts to provide a facilitative legal framework for contract farming.

Under Section 38(1) of the Model APMC Act, 2003, it was provided that the:

“Contract farming Sponsor shall register himself with the Market Committee or with a prescribed officer in such a manner as may be prescribed”.²

Pursuant to this, various states made amendments to their respective APMC Acts and included a similar provision. About 14 states also formulated rules under these provisions to specify the requirements for registering a contract farming sponsor.³

For instance, under Section 4(1) of The Punjab Contract Farming Act, 2013, it was provided that the *“Sponsor shall register himself with the Registering Authority [...]”*.⁴ A similar provision existed in Section 22-N of the Rajasthan APMC Act, 1961,⁵ Section 5F (1) of the Assam APMC Act,⁶ Section 5E (1) of the Maharashtra APMC Act,⁷ Section 8(a)(i) of the Haryana APMC Act⁸ and the respective Acts of Gujarat, Chhattisgarh, and Karnataka.

¹ The Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020, §12.

² The State Agricultural Produce Marketing (Development and Regulation) Act, 2003, §38 (3).

³ COMMITTEE ON DOUBLING FARMER'S INCOME, *Report of the Committee on Doubling Farmer's Income*, Volume IV ("Post-production interventions: Agricultural Marketing"), 31-32 (August 2017).

⁴ The Punjab Contract Farming Act, 2013, §4 (1).

⁵ Rajasthan APMC Act, 1961, § 22-N.

⁶ The Assam Agricultural Produce Market (Amendment) Act, 2006, §5 (F) (1).

⁷ Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, §5 (E) (1).

⁸ Haryana Agricultural Produce Markets Act, 1961, § 8 (a) (i).

The documents required for registration as a Sponsor in Gujarat includes – Solvency Certificate, Bank Guarantee, Details of Registration of Company, Partnership, NGOs, etc.⁹ Similar documents were required for registration in Karnataka¹⁰ and Maharashtra.¹¹ In Rajasthan and Haryana, the particulars ranged from Permanent Address, Registration Details, Farmer Details (with whom the contract is proposed), Crop Details, and Previous Experience (if any).¹²

Further, in the Model Contract Farming Act, 2018, Section 17 (3) required the Sponsor to apply for registration “*in such manner as prescribed*”.¹³

Despite these antecedents, such a provision is conspicuously missing from the Price Assurance Act, which has an overriding effect on the current State Government laws on Contract Farming by virtue of Section 20.¹⁴

It is recommended that this provision is incorporated as part of Section 12 of the Price Assurance Act. Given the imbalance in the bargaining power between the parties to a farming agreement, an electronic repository of all ‘persons’ who intend to enter into farming agreements must be maintained. This will prevent unscrupulous Sponsors/companies which crop up overnight to exploit the farmers and ensure that the Sponsor has strong financial credentials to hold up his end of the agreement. Further, furnishing a document such as a Bank Guarantee will protect the Farmer against any potential insolvency of the Sponsor and ensure timely payment for his services. In an Occasional Paper by NABARD¹⁵ titled “*Contracting Farming as Means of Value-Added Agriculture*”, it was observed that:

“the best candidates should possess persistence, superior knowledge base and back-up, seriousness of intent as demonstrated by the criticalness of the activity to their own survival and sufficient financial, organisational and human resources to see the programme through the long haul.”

The paper also recognised the importance of the registration of a contract farming sponsor.

⁹ Gujarat Agricultural Produce Markets (Amendment) Rules, 2013, Rule 88 (1), Form-J.

¹⁰ The Karnataka Agricultural Product Marketing (Regulation And Development) Rules, 1968, Rule 91-A, Form 54.

¹¹ The Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967, Rule 4-O, Form G.

¹² The Punjab Agricultural Produce Markets (General) Rules, 1962, Rule 8 (A) (1), Form A-1.

¹³ The -----State /UT Agricultural Produce and Livestock Contract Farming (Promotion & Facilitation) Act, 2018, § 17 (3).

¹⁴ The Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020, §20.

¹⁵ NATIONAL BANK FOR AGRICULTURE AND RURAL DEVELOPMENT, DR. CS DESHPANDE, Contract Farming as Means of Value-Added Agriculture, xiv (2005) available at <https://www.nabard.org/demo/auth/writereaddata/File/OC%2042.pdf> (Last visited on February 18, 2021).

The responsibility of notifying the rules for this provision must lie with the State Government, and they must ensure that registration is completed in a time-bound manner.

ii) Include Section 4 (5) specifying the consequences of non-fulfilment of Quality Standards

Section 4 of the Act provides that the parties to a farming agreement ‘*may identify and require as a condition for the performance of such agreement compliance with mutually acceptable quality, grade, and standards of a farming produce.*’¹⁶ In the aforementioned NABARD Report, it was recognised that the consequence of quality-default is a crucial aspect that must be clarified in the agreement.¹⁷ Farmers might find it difficult to market the produce and would, in most cases, accept a mutually re-negotiated lower price for the produce which does not meet the quality standards. It is advisable for the agreement to specify a minimum standard for acceptance, along with the rights of the producer (of re-sale), in case the minimum standard is also not maintained.

As per the Model APMC Act, 2003, ‘Consequences of non-conformity with quality specifications’ must be a mandatory provision in the agreement.¹⁸ Therefore, to clarify such issues, we recommend the inclusion of Section 4 (5), which may be worded as below-

4 (5) The parties entering into a farming agreement may specify the consequences of default in mutually accepted quality, grade, and standards for the produce.

Provided that the parties may include minimum quality, grade, and standards at which the produce shall be accepted at a mutually re-negotiated price

iii) Include a Quantity-specific provision in the Price Assurance Act

In Section 3 (I) (a) of the Price Assurance Act, it is provided that the Farming Agreement may provide for the terms and conditions of the produce, specifically “*the time of supply, quality, grade, standards, price, and such other matters*”.¹⁹ Further, Sections 4, 5, and 6 respectively deal with quality-grade-standards, price, and time of supply, respectively.²⁰ However, the Act lacks a similar provision for the quantity of the produce, which is to be grown by the Farmer and procured by the Sponsor under the agreement. To prevent any confusion over the quantity and quantity-related disputes, it is recommended that Section 3(a) is amended to include ‘quantity’ as a term of the agreement, and a separate Section is dedicated to elaborate upon the

¹⁶ The Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020, §4.

¹⁷ *Supra* note 15, 141.

¹⁸ The State Agricultural Produce Marketing (Development and Regulation) Act, 2003, Addendum on Contract Farming Agreement and Its Model Specification.

¹⁹ The Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020, §3(I)(a).

²⁰ *Id.*, §§4, 5 and 6.

same. This has further been included by the Model Contract we have proposed in the later segment of these recommendations.

In the Model APMC Act, 2003, “*Quantity Specification of the Farm Produce*” was mentioned as a mandatory provision in the Farming Agreement. Quantity can be specified in various ways- volume basis (crops grown using the supplied inputs), area basis (the entirety of the produce grown in a given area), entire crop, and fixed quantity (stipulated in the contract).²¹ According to the NABARD paper, contracts entered into by Pepsico and Nijjer in the past ‘*specified the company's right to the totality of produce, without necessarily obligating them to buy it all.*’²² This basically meant that the sponsors had the right to procure as much as they wanted, and there was no stipulation regarding the excess produce. Such a situation is unwarranted, and there must be adequate safeguards against the same.

Therefore, it is recommended that a separate Section shall spell out the requirement for a specific provision regarding ‘Quantity of the Produce’ in the contract. The Section must bind both the parties to mutually decided upon the quantity to be produced based on any of the four aforementioned criteria or any other appropriate criterion. The rights of the Farmer over the excess produce (if the entire crop is not procured) shall be spelt out clearly and unambiguously. Similarly, the Sponsor may stipulate for a Right of First Refusal over the extra produce, which must also be mentioned. These recommendations are in line with the UNIDROIT Guidelines on Contract Farming.²³

Suggested Draft of the Section:

The quantity to be procured of farming produce may be determined and mentioned in the farming agreement itself, based on the following criteria-

- (a) Volume-Basis, i.e., the Sponsor will procure the entire volume of the farming produce grown using the farm services provided by him to the Farmer;*
- (b) Area-Basis, i.e., the Sponsor will procure the entire volume of the farming produce grown in a pre-determined area;*
- (c) Fixed Quantity;*
- (d) Entire Crop;*
- (e) Any other such criterion which may be appropriate.*

Provided that the farming agreement shall specify the rights of the Farmer over the excess produce (if any).

²¹ The State Agricultural Produce Marketing (Development and Regulation) Act, 2003, Addendum on Contract Farming Agreement and Its Model Specification.

²² *Supra* note 15, 17.

²³ UNIDROIT, FAO and IFAD, *Legal Guide on Contract Farming*, UNIDROIT/FAO/IFAD (2005).

Further, provided that the farming agreement must contain the Right of First Refusal over the excess produce in case the Sponsor wants to exercise.

iv) Allowing Appeals to the District Court

The Price Assurance Act under Section 13(2) has mandated that any dispute arising from any farming agreement shall be first referred to the conciliation board which was formed as per the provisions of the farming agreement. If the conciliation board fails to reach an agreement within thirty days, an appeal can be made to the Sub-Divisional Magistrate acting as the Sub-Divisional Authority under Section 14(1). Further, if any party is aggrieved by the decision of the Sub-Divisional Authority, an appeal can be made to the Collector or Additional Collector under Section 14(4). The Appellate Authority has all the same power as a decree of a civil court which will be enforceable in the same manner as a decree under the Code of Civil Procedure, 1908.

Section 14(4):

“Any party aggrieved by the order of the Sub-Divisional Authority may prefer an appeal to the Appellate Authority, which shall be presided over by the Collector or Additional Collector nominated by the Collector, within thirty days from the date of such order.”

The issue here, which many farmers fear as well, is the heavy bureaucratization of the process which is completely executive driven.²⁴ Although, the earlier APMC Model Acts were executive as well,²⁵ the step away from APMCs means that many farmers will not have the support they first had. Earlier, the APMC Act provided for the APMC as a dispute resolution authority. The farmers were well adept with workings of the APMC, the members and other parties as well.²⁶ Hence, it was many farmers found it reasonable and locally relevant for dispute which they had.

However, the departure from APMCs as the dispute resolution board to a conciliation board with appeals to the Sub-Divisional Magistrate and Collectors is uncharted territory for most farmers. While small issues may be successfully resolved at the sub-divisional authority, the appeal from there should not lie with the collector but rather the civil courts. Excluding the jurisdiction of civil courts also automatically excludes the participation of legal professionals who can be exceptionally helpful for farmers when standing up against large corporates. It is

²⁴ *Explained: In farm laws, the dispute settlement provision Government has offered to roll back*, THE INDIAN EXPRESS, available at <https://indianexpress.com/article/explained/explained-in-farm-laws-the-dispute-settlement-provision-govt-has-offered-to-roll-back-7106606/> (Last Accessed on February 20th, 2021).

²⁵ Model Act: The State Agricultural Produce Marketing (Development and Regulation) Act, 2003, available at <https://dmi.gov.in/Documents/Marketing.pdf> (Last Accessed on February 20th, 2021).

²⁶ Menaka Doshi, *New Farm Laws: Good Intent, Missing Safeguards*, BLOOMBERG QUINT, available at <https://www.bloombergquint.com/law-and-policy/new-farm-laws-good-intent-missing-safeguards>. (Last Accessed on February 20th, 2021)

incumbent to provide legal support to farmers and such can be best done by allowing an appeal to civil courts where they can receive counselling from various legal professionals.

Allowing an appeal to the civil courts is further in line the doctrine of separation of powers since the Sub-Divisional Magistrate is primarily an executive authority and adjudication falls within the purview of the judiciary. Providing appellate power to executive officers subordinate to concerned ministers not only hampers the neutrality of the process but can also lead to biased judgements because unlike the judiciary, executive officers do not enjoy impunity for their actions.

Suggested Draft for the Section:

14(4) – Any party aggrieved by the order of the Sub-Divisional Authority may prefer an appeal to the Appellate Authority, which shall be presided over by the District Court, within thirty days from the date of such order.

v) Incorporate a Mandatory Model Contract

Section 3(4) of the Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020 ('Price Assurance Act') provides that:

“For the purpose of facilitating farmers to enter into written farming agreements, the Central Government may issue necessary guidelines along with model farming agreements, in such manner, as it deems fit”.²⁷

Here, it is noted that the afore-stated provision, being a 'may' provision, is merely recommendatory upon the Central Government. In our view, this must be amended to a 'shall' provision, establishing this requirement as a legal mandate upon the Central Government, for reasons identified hereafter.

The farming contract envisaged under the Price Assurance Act is proposed to be entered into between a farmer (big or small) and a corporate entity. Resultantly, a pressing concern that has emerged is the power disparity between the two entities. Majority of India's farming population (85%) are small-farmers.²⁸ Resultantly, such farmers lack access to legal resources, starkly contrasting with corporate entities. This may handicap them from (a) incorporating clauses beneficial to their interests; and (b) understanding the implications of pre-incorporated clauses. They are thus at the behest of corporates, which runs a risk of having increasingly one-sided or unconscionable uncontracts, overlooking farmer interests and inculcating scope for exploitation.

²⁷ The Farmers (Empowerment and Protection Agreement) on Price Assurance and Farm Services Act, 2020, §3(4).

²⁸ Jawandhiya & Dandekar, *Three Farm Bills and India's Rural Economy*, THE WIRE, available at <https://thewire.in/agriculture/farm-bills-indias-rural-issues> (Last accessed on 17 February 2021).

In order to overcome this power-disparity or at the least, address the same, it is believed that a model contract issued by the Central Government, incorporating clauses for the benefit of farmers, may set a reference point for future farming contracts.

The Food and Agriculture Organisation ('FAO'), a specialised agency of the United Nations, released the Model Agreement on Farming ('Model Agreement') on June 2018. This was accompanied by a Commentary on the Model Agreement, Legal Guide to Contract Farming and other such guidelines.²⁹ The aim of the Model Agreement is to establish a simple and practical legal tool to support the implementation of global principles and guidelines and make responsible investment a reality. Additionally, and what forms the focus of our recommendations, it is also designed to address some inherent inequalities which exist in contract farming and disadvantages faced by farmers, aiming to create equitable and sustainable farming/business relationships.³⁰

Hereafter, we have reproduced the Model Agreement with recommended changes, in line with the Price Assurance Act and Indian farming conditions:

²⁹ IISD, Model Agreement for Responsible Contract Farming, June 2018, available at <https://www.iisd.org/projects/model-agreement-responsible-contract-farming> (Last accessed on 17 February 2021).

³⁰ Smaller, Speller & Brewin, Model Agreement for Responsible Contract Farming: With Commentary, June 2018, available at <http://www.fao.org/3/ca1772en/CA1772EN.pdf> (Last accessed on 17 February 2021).

vi) Model Agreement**Recommendation:**

There must be a provision mandating replication of the contract in the vernacular of the farmers to ensure that a step is taken in facilitating a complete understanding of the contract.³¹

1 THE PARTIES

1.1 This contract is made at [insert place] on [insert date] between [insert name and address of Sponsor, organisation or business registration number, if available], the “Sponsor,” and [insert name/s and address of Farmer or farmer organisation, identity or organisation number, if available], the “Farmer.”

1.2 The Farmer warrants that:

- (i) no less than 10 days before the signature of this Agreement, the Farmer received a [copy of this Agreement]/[a written offer incorporating the terms of this Agreement].
- (ii) The Farmer has read this Agreement or had this Agreement read to him/her by an independent third party and had a reasonable opportunity to understand this Agreement before signature.
- (iii) The Farmer has had the opportunity to seek the advice of [an independent legal advisor]/[a Farmer organisation] on this Agreement before signature.

Recommendation:

It is recommended that in order to assuage concerns of power disparity, a public authority entity may be appointed to ensure that the contract is understood in its true sense by both the parties. This may be done at the registration stage, which is a mandatory requirement for such farming contracts. This process would ensure that the contract is in accordance with the requirement of ‘free consent’ under Section 13 of the Indian Contract Act, 1872, making it

³¹ Braja Bandhu Swain, *Contract Farming and Farmer’s Empowerment and Protection Bill 2020*, available at <https://practiceconnect.azimpremjiuniversity.edu.in/contract-farming-and-farmers-empowerment-protection-bill-2020/> (Last accessed on 17 February 2021) (‘Swain I’)

enforceable in law.

Additionally, the recommendation mandating replication of the contract into the vernacular language of the Farmer will add to this requirement.

2 THE PURPOSE

- 2.1 The Sponsor agrees to buy [insert commodity] produced by the Farmer, and the Farmer agrees to produce and sell to the Sponsor [insert commodity], “the Goods”, in accordance with the articles set out below.
- 2.2 *[Optional: The Parties affirm their intention to faithfully execute their respective obligations under this Agreement in accordance with the principles of good faith, reasonableness, efficacy, loyalty and fair dealing, and will at all times endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively, and providing necessary information in a timely and transparent manner.]*

3 PRODUCTION SITE

- 3.1 This Agreement relates to Goods produced on [insert size of land area in hectares], located at [insert GPS co-ordinates/nearest town or village/other applicable way to specify], *[optional: and held under title [insert title deed/land registration number/ certificate/ other proof of title or use right].*

4 THE PRODUCT

Product quantity

[Option 1: Exclusive output arrangement]

- 4.1 The Farmer agrees to deliver exclusively to the Sponsor all the Goods produced [on the Production Site]/[using the Sponsor’s Inputs]. The Farmer shall not enter into any other marketing arrangements with any other Sponsor for the Goods produced [on the Production Site]/[using the Sponsor’s Inputs], for the duration of this Agreement, unless expressly authorised by the Sponsor in writing. The Farmer shall not deliver Goods to the Sponsor which were not produced on the Production Site *[optional: and using the Sponsor’s Inputs.]*
- 4.2 The Farmer may retain [insert unit of measurement] of Goods for household consumption per [season]/[delivery].

[Option 2: Non-exclusive output arrangement]

- 4.3 The Farmer agrees to deliver to the Sponsor [insert unit of measurement, range, or percentage] of the Goods produced [on the Production Site]/[using the Sponsor's Inputs].
- 4.4 The Farmer may sell Goods produced in excess of the amount stipulated in Article 4.3 to a third party. *[Optional: The Sponsor retains the right of first refusal to purchase the excess Goods. If the Sponsor does not notify, in writing, the Farmer of its intention to purchase the excess Goods within [insert number of days] of the Farmer giving notice to the Sponsor of the availability of excess Goods for purchase, the Farmer may sell the excess Goods to a third party.]*

Recommendation:

Under 4.1. it is essential to stipulate the extent of the exclusivity. For instance, it must be specified if this relates to the entirety of the farmer's produce, irrespective of inputs; if it will extend only to that produce which is grown with the Sponsor's inputs; etc.

Clause 4.2 may be extended to include a provision stipulating that upon excess production, failure of quality, etc., the farmer may retain the produce for household consumption and/or sell the same in the local market.

Product quality

- 4.5 The Farmer agrees to supply Goods which comply with the [quality standards as defined in Annex [W]]/[insert relevant quality assurance scheme].

[Annex [W]]: Product-based quality requirements [insert one or more as required by the Sponsor]:

- (i) physical characteristics
- (ii) contents
- (iii) grade
- (iv) standard of fitness for a purpose
- (v) geographical denomination
- (vi) relevant national or international standards or grades
- (vii) other requirements]

Recommendation:

Under Clause 4.5., it is urged that the Model Contract specifies that the quality standards must be specific and not widely worded. This recommendation comes in light of Section 11 of the Price Assurance Act which gives the parties the power to alter/terminate the agreement for “any reasonable cause”. Given the wide ambit of this provision, it is believed that specificity in contract terms can prevent undue exploitation of the farmer. Clause 9.6. of the Model Agreement also urges us to make this recommendation since any non-compliance may facilitate the Sponsor in dictating the price of the Goods to be sold.

Production methods

4.6 The Farmer shall comply with:

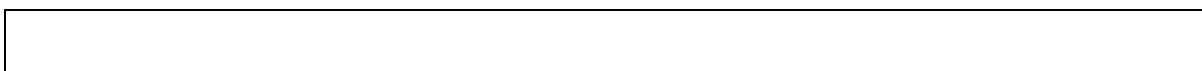
- (i) [the production methods prescribed in Annex [X]]/[insert required production methods]; or
- (ii) [the standards prescribed in [Annex [X]]/[insert required fair trade, organic or other certification scheme]/[insert industry Code of Conduct]/[insert relevant social, labour, environmental or cultural standards]/[insert reference to the relevant national laws]; and/or
- (iii) [the post-production methods prescribed in Annex [X]]

Recommendation:

Under Clause 4.6, the Model Contract must urge the Sponsor to opt-for environmentally sustainable modes of production. For this purpose, recommendations may be made to replace the use of chemical fertilisers, pesticides, etc. with biological inputs such as manure. Additionally, wherever such methods are stipulated by the Sponsor, it is h/she who must ensure compliance with the same.

This recommendation stems from the fact that historically in India, the profit maximising objectives of corporates incentivise them to deploy excessive chemicals in farming, degrading the soil quality and jeopardising long-term productivity. This can be seen from the gherkin production in Tamil Nadu.³² In this case study we see that such usage is not only problematic from an environmental perspective, but rather, it forces corporates to shift from one farmer to the another for fertile land, destroying long-term relationship prospects.

³² Braja Bandhu Swain, *Contract Farming in Andhra Pradesh: A Case of Rice Seed and Gherkin Cultivation*, 46 ECONOMIC & POLITICAL WEEKLY 42 (October 2011).



Inspection of the Production Site

- 4.7 Subject to [insert period of time] advanced notice, the Sponsor, its representative/s [Optional: or the Independent Entity] may visit the Production Site for the purpose of providing advice, supervising any production process and/or verifying the Farmer's compliance with the prescribed production methods, provided that the visit shall be carried out during normal business hours and shall not unduly burden or inconvenience the Farmer.
- 4.8 Inspection visits shall be carried out [insert frequency, e.g. weekly, monthly]/[in accordance with the inspection schedule at Annex [X]].

[Optional: Certification]

- 4.9 *The Farmer shall, [at the sole expense of the Sponsor]/[at the sole expense of the Farmer]/[at the joint expense of the Parties whereby the Farmer pays X% and the Sponsor pays X%], obtain a certificate from [insert relevant certification body], to certify that the Goods [and/or] the methods used by the Farmer to produce the Goods are in conformity with the standards prescribed in 4.5 and 4.6.*

5 INPUTS

Farmer's inputs

- 5.1 The Farmer shall provide [insert Farmer Inputs, including e.g. land, physical facilities, water, energy and labour].
- 5.2 *[Optional: The Farmer shall purchase the following Inputs, as designated by the Sponsor from time to time: [insert Inputs to be purchased by the Farmer, including specific brand names and vendors etc.]]*
- 5.3 The Farmer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws]. The Farmer shall use the Inputs in accordance with the instructions as provided by the Sponsor in Annex [Y] of this Agreement.

Sponsor's inputs

- 5.4 The Sponsor shall provide the [insert Sponsor Inputs, including e.g. seeds, fertilizers, training].
- 5.5 The Sponsor's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws];
- 5.6 The Farmer shall use the Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement.
- 5.7 Upon receipt of the Sponsor's Inputs, the Farmer shall verify the Inputs and notify the Sponsor in writing of any apparent defects.
- 5.8 The Farmer shall be responsible for any loss or damage of the Sponsor's Inputs from the time of delivery and acceptance until their inclusion in the production process.
- 5.9 The Sponsor shall be responsible for any loss or damage to the Goods, the Production Site, the Farmer's property and/or personnel caused by any Inputs that are not of reasonable quality, fit for their intended purpose, and/or free of defects, including latent defects [and compliant with any specific quality standards set out in Annex [Y] of this Agreement].
- 5.10[Optional: The Farmer shall return any unused Inputs to the Sponsor at the end of the production cycle, as agreed by the Parties.]
- 5.11[Optional: The Sponsor shall provide training or technical assistance necessary for the use of Inputs in accordance with the instructions.]
- 5.12[Optional: insert provisions regarding the Sponsor's intellectual property in respect of Inputs, if applicable].

Payment for inputs

[Option 1: Free of charge]

- 5.13 The Sponsor shall provide and deliver the Inputs free of charge, including providing associated training or technical assistance needed for the application and use of those Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement. The Sponsor shall deliver the Inputs at the time and place specified in Annex [Y].

[Option 2: Payment]

5.14 The Farmer shall pay for the Inputs provided by the Sponsor according to the Input Price provided for in the pricing scheme in Annex [Y]. The Input Price in Annex [Y] shall be updated [insert a time period]/[upon agreement of the Parties]/[based on custom and trade usage]/[based on past practices between the Parties]/[based on appropriate market prices]. The Sponsor shall deliver the Inputs at the time and place specified in Annex [Y].

5.15 The Input Price, delivery and cost of training or technical assistance shall be deducted from the price payable by the Sponsor for the Goods on delivery.

[Option 3: Shared payment]

5.16 The total cost of all Inputs, including delivery, training, and technical assistance, shall be provided for in Annex [Y]. The Sponsor and Farmer shall share the cost of the Inputs, as follows: [insert details of share of costs]. The Sponsor shall deliver the Inputs at the time and place specified in Annex [Y].

5.17 The Farmer's share of the costs shall be deducted from the Price payable by the Sponsor for the Goods on delivery.

6 DELIVERY AND ACCEPTANCE

Delivery

6.1 [The Farmer shall deliver the Goods to the delivery point at the Sponsor's facility at [insert location of delivery point]]/[The Sponsor shall collect the Goods from the delivery point at [location of delivery point(s)]], according to the delivery schedule, and in accordance with the technical requirements for delivery, set out in Annex [Z].

6.2 The costs of transportation of the Goods to the delivery point shall be paid by the [Sponsor]/[Farmer]. The Sponsor shall bear all costs associated with the Goods after delivery to the delivery point.

6.3 The [Sponsor]/[Farmer] shall be responsible for loading the Goods. The [Sponsor]/[Farmer] shall be responsible for unloading the Goods.

6.4 The Party which is the owner of the delivery point shall maintain it in a reasonable state of cleanliness and hygiene.

6.5 The Goods shall be packaged in [insert commodity-specific packaging requirements] by the Farmer before delivery. *[Optional: The packaging will be supplied to the Farmer by*

the Sponsor, and will remain the property of the Sponsor. The value [insert value] of any bags or containers supplied by the Sponsor that are not returned to the Sponsor, or are returned in a damaged state, shall be deducted from the payment for the Goods. The Farmer shall not use the containers for any purpose other than the delivery of the Goods to the Sponsor]. The cost of packaging will be borne by [the Farmer]/[the Sponsor]/[both the Sponsor and the Farmer whereby the Sponsor pays X% and the Farmer pays X%]. For the purposes of weighing the Goods, the weight of the containers, [insert weight], shall be deducted.

Recommendation:

As indicated in the beginning of this segment, 85% of the farming population in India is comprised of small farmers. Operating in remote areas from limited finances, it may prove to be cumbersome for them to comply with bearing transportation costs, in the absence of external help or the support of a farmer's collective.³³

Accordingly, under Clause 6.2., it is recommended that in the absence of a farmer's collective, delivery costs must be borne by the Sponsor due to the hardship of the Farmer. Additionally, the point of 'delivery' must be clearly defined, for it is this stage at which the risk of the goods would pass from the Farmer to the Sponsor. The Model Contract must aim to transfer this risk at an early stage, such as receipt of Goods at the farm to ensure farmer sustainability.

Inspection of the Goods

- 6.6 The Sponsor shall weigh, sort, and inspect the Goods at its own cost, no more than [insert number of hours] after delivery at the delivery point [*Optional: or at another location for weighing and sorting*] and in accordance with [insert recognised method of inspection and classification applicable to the local context and in as much detail as possible].
- 6.7 Where the Sponsor fails to inspect the Goods within [insert number of hours] of delivery, all risks and costs of spoilage of the Goods occurring after delivery shall be borne by the Sponsor.

³³ SILVA, BAKER, SHEPHERD et. al., AGRO-INDUSTRIES FOR DEVELOPMENT, 197 (May 2009).

6.8 The Farmer *[optional: or the Independent Entity]* may be present during the inspection of the Goods. The Sponsor *[optional: or the Independent Entity]* shall issue a written document evidencing the specification of the Goods as inspected. Where the Farmer objects to the specification of the Goods as determined by the Sponsor, the Parties shall seek a resolution in accordance with Article 11 below (Dispute Resolution).

6.9 The costs associated with the inspection shall be covered by the Sponsor.

Recommendation:

For the inspection process under Clause 6.8., the Farmer and Sponsor may mutually agree to have a third party inspector to mitigate the possibility of having to resort to a dispute settlement mechanism.

This is necessary since the Price Assurance Act provides for termination of contract for “any reasonable cause” under Section 11. Since the ambit of this is wide and leaves scope for exploitation of the farmer, an independent third party may oversee the process.

Acceptance of Goods after inspection

6.10 The Parties’ agreement on the quantity and quality of the received Goods constitutes acceptance of the Goods.

6.11 The Sponsor shall provide the Farmer with a written receipt specifying the time, date, quantity and quality of Goods. The written receipt shall be duly signed by the Farmer *[optional: and Sponsor]*.

[Optional: Insurance]

6.12 *[The Farmer agrees to purchase, at the Farmer’s own cost]/[The Sponsor agrees to purchase for the Farmer, [at the Sponsor’s own cost]/[at the Farmer’s cost]], an insurance policy with the following coverage:*

(i) Crop insurance, if available, against disease, natural disasters such as floods, droughts or hail, and against loss of revenue as a result of a decline in commodity prices.

(ii) Liability insurance, specifying the minimum limits of guarantee.

(iii) *Building, machinery and equipment insurance against natural disasters such as floods, droughts or hail, fire and theft.*

(iv) *[Other insurance]*

7 PRICING MECHANISM

[Option 1a: Fixed price based on reference price]

7.1 The Sponsor agrees to pay the Farmer [insert \$X/kilo] of Goods delivered, based on the [insert reference price, for example, Fairtrade Minimum Prices and Premiums].

[Option 1b: Fixed price based on grading schedule]

7.2 The Sponsor agrees to pay the Farmer for Goods delivered according to the following grading schedule:

GRADE	PRICE
A	X
B	Y
C	Z

7.3 The Sponsor agrees to pay the Farmer the current market price per [insert market index] for the Goods, or the fixed price as agreed in the preceding article, whichever is the greater.

[Option 2: Market price]

7.4 The Sponsor agrees to pay the Farmer the market price [insert market index] at the time of delivery.

[Optional: Premiums and deductions]

- 7.5 *[The Sponsor shall pay a premium of [insert currency amount or formula] for every [insert unit] of Goods delivered above the agreed quantity up to [insert quantity limit].*
- 7.6 *The Sponsor shall pay a premium of [insert currency amount or formula] for every [insert unit] of Goods delivered above the agreed quality up to [insert quality limit].*
- 7.7 *The Sponsor shall deduct [insert currency amount or formula] from the final amount for every [insert unit] of Goods delivered below the agreed quality.*
- 7.8 *The Sponsor shall comply with [insert standards or certification requirements] to evaluate changes in quantity and quality of Goods produced.]*

Time and method of payment

- 7.9 The Sponsor shall make the payment within [insert period of time] from acceptance of the Goods. Payment shall be made [via bank transfer to the Farmer's nominated account]/[in cash]/[in specify currency]. Upon receipt of the full purchase amount, the Farmer shall provide the Sponsor with a written receipt of payment(s) made specifying the amount, time and delivery date of accepted Goods.

8 FORCE MAJEURE

- 8.1 For the purposes of this Agreement, Force Majeure Event means any event that arises after the contract has been signed, is unpredictable, inevitable, beyond the Parties' reasonable control and that objectively prevents one or both of them from performing their obligations, including, but not limited to, wars, insurrections, civil disturbances, interruption of transportation or communication services, major change to agricultural law or policy in the country of production, blockades, embargoes, strikes and other labour conflicts, riots, epidemics, earthquakes, storms, droughts, fires, floods, or other exceptionally adverse weather conditions, explosions, lightning, or acts of terrorism.
- 8.2 As soon as reasonably practicable after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.
- 8.3 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 8.4 Provided it has complied with Articles 8.2 and 8.3 above, if a Party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 8.5 Where it is feasible in all the circumstances, those obligations may be suspended by the agreement of the Parties during the continuance of such Force Majeure Event, and no damages or penalties for delay in performance shall be due.
- 8.6 If an obligation is suspended by reason of Force Majeure for more than [insert number of days] from the Affected Party giving notice of the Force Majeure Event, or if suspension is not feasible in all the circumstances, the other Party may terminate the contract and all outstanding payments relating to the Inputs supplied for the production shall [fall due]/[be forgiven], and the Parties shall enter into good faith negotiations to enter into a new Agreement for the supply of the Goods.

Recommendation:

It is recommended that the extensive definition of *force majeure* under Clause 8.1. may be incorporated into Section 2(j) of the Price Assurance Act. Further additions may be made, such as, pest attack and unknown virus attack since these two are common occurrences in contract farming and are beyond the control of Farmers.³⁴

9 REMEDIES

- 9.1 The Parties shall cooperate in the application of the remedies provided for in this Article, and shall apply those remedies in a manner that is commensurate to the breach in question, with a view to preserving, as much as possible, the Parties' ongoing relationship and achieving the purpose of this Agreement as outlined in Article 2 above.
- 9.2 Unless a Force Majeure Event takes place, a party failing to comply with any obligation in this Agreement (the Breaching Party) is in breach of this Agreement.

Mitigation and right to cure breach

³⁴ Swain I, *supra* note 31.

9.3 Where a party (the Aggrieved Party) becomes aware that the Breaching Party is or will be in breach of its obligations, it shall immediately notify the Breaching Party, and shall take all reasonable measures to minimize and mitigate the effects of the breach whenever possible. Any reasonable expenses or difference in value incurred by the Aggrieved Party should be compensated by the Breaching Party.

9.4 Where the Breaching Party has been notified or otherwise becomes aware that it is or will be in breach of its obligations, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach within [insert number of days], including by;

(i) replacing any non-conforming Goods with Goods which conform with the requirements of this Agreement;

(ii) replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;

(iii) modifying or correcting any non-conforming Production Method or other process required by this Agreement, including in accordance with any specific instructions issued by the Aggrieved Party or any relevant certification body; and/or

(iv) completing any partial delivery, or taking delivery as the case may be, within the time frame agreed between the Parties.

Right to take corrective action

9.5 Where the Breaching Party does not or cannot cure the breach in accordance with Article 9.4 above, the Aggrieved Party may take corrective action in accordance with the articles below.

Corrective action: non-conforming Goods or Inputs

9.6 If the Breaching Party does not or cannot cure the breach, and the breach does not arise from the Aggrieved Party's failure to comply with its obligations in this Agreement, the Parties may, by agreement, adjust the purchase price to reflect the fair value of the Goods or Inputs supplied.

9.7 If the Parties cannot agree on an adjusted price for the non-conforming Goods or Inputs, the Aggrieved Party may reject them and withhold payment.

9.8 Where the non-conforming Goods or Inputs are hazardous, dangerous or unsafe, the Aggrieved Party may require the Breaching Party to safely dispose of those Goods or Inputs at the expense of the Breaching Party.

Recommendation:

Given Clause, it is all the more necessary to succinctly establish the obligations of both parties and the framework in which they are to operate under clauses such as Clause 4.5. Otherwise, this clause may provide the Sponsor with a convenient way to influence the price of the Goods.

Corrective action: failure to supply Goods or Inputs

9.9 Where the Breaching Party fails to supply the Aggrieved Party with the agreed Goods or Inputs, the Aggrieved Party may obtain replacement Goods or Inputs of a similar description and quality in the cheapest market available, and may claim from the Breaching Party the difference between the price under this Agreement and the price that the Aggrieved Party paid for the replacement Goods or Inputs.

Corrective action: failure to take delivery

9.10 Where the Sponsor fails to take delivery of conforming Goods within [insert period of time] from the delivery time in Annex [Z], the Farmer may sell the Goods to a third party and may claim from the Sponsor the difference between the price under this Agreement and the price that the Farmer received for the Goods.

Termination upon failure to cure or correct

9.11 Where the Breaching Party has committed a breach of this Agreement that is not a Fundamental Breach, and an attempt to cure by the Breaching Party, or corrective action by the Aggrieved Party, has failed to cure, prevent, or correct the breach, the Aggrieved Party may, with 14 days notice in writing to the Breaching Party, terminate this Agreement.

Termination upon Fundamental Breach

9.12 Where the Breaching Party commits a Fundamental Breach of this Agreement, the Aggrieved Party may terminate the Agreement with 14 days notice in writing to the Breaching Party. The following events are deemed to be a Fundamental Breach:

- (i) The Sponsor failing to take delivery of conforming Goods, or significantly delaying in taking delivery, on at least [insert number] occasions and by at least [insert period of time] on each occasion;
- (ii) The Sponsor failing to pay for conforming Goods for more than [insert number of days] past the payment date;

(iii)[Optional – use if there is an exclusive output arrangement: The Farmer entering into any marketing arrangement with any other Sponsor for the Goods produced [on the Production Site] or [using the Sponsor’s Inputs]].

(iv)The Farmer failing to deliver conforming Goods in accordance with the delivery Schedule in Annex [Z], or significantly delaying in making delivery on at least [insert number] occasions and by at least [insert period of time] on each occasion.

Damages

9.13 Without limiting any other rights or remedies available under this Agreement, the Aggrieved Party may claim damages for any costs, losses or expenses which are attributable to the Breaching Party’s breach of this Agreement in accordance with the applicable laws.

10 DURATION, RENEWAL AND TERMINATION

Duration

10.1This contract is valid [for a period of [insert number of days/months/years/production seasons]/[from the date of signature to [insert end date]].

Termination

10.2This Agreement may be terminated:

- (i) following a breach of the Agreement in accordance with Article 9.11 or 9.12;
- (ii) by mutual agreement of the Parties;
- (iii)by either Party by giving [insert number of months] written notice to the other Party.

Recommendation:

In light of Section 11 of the Price Assurance Act, Clause 10.2 must also provide for termination by mutual consent because of “any reasonable cause”.

Additionally, it is recommended that this requirement may be accompanied by a “reasonable notice” clause to ensure that both parties have adequate time to work towards mitigating damages.

Renewal

[Option 1: Automatic renewal]

10.3 In case neither Party expresses the intention to terminate, the contract is automatically extended for the following [year]/[production season].

[Option 2: Renewal by agreement]

10.4 Upon expiration of this Agreement in accordance with Article 10.1, the Parties may agree in writing to its renewal.

Periodic review

10.5 The Parties shall meet on a [insert frequency, depending on the nature of the commodity and length of contract] basis to review the implementation of this Agreement. Where a Party’s ability to fulfil its obligations under this Agreement has fundamentally altered due to a significant change of circumstances, that Party may request a renegotiation of one or more of the terms of this Agreement, and the other Party shall consider that request in good faith.

[Optional – Assignment]

10.6 *[The Sponsor may assign all or part of its obligations under this Agreement to an affiliate or a third party, subject to prior notification to the Farmer, and provided that the affiliate or third party acknowledges and agrees to assume all of the obligations of the Sponsor under this Agreement and has the capacity to perform those obligations.]*

11 DISPUTE RESOLUTION

11.1 The Parties to this Agreement shall provide notice to each other in the event of any disputes arising out of this Agreement and shall seek to amicably resolve within [insert time period], through negotiation and cooperation, any such dispute concerning the application or interpretation of the Agreement.

11.2 If the Parties to this Agreement are unable or unwilling to resolve the dispute amicably, the Parties shall seek local and independent mediation of the issues within [insert time period] and under the rules of the [insert mediation institution or association.]

11.3 Where the dispute has not been resolved in accordance with the preceding paragraphs, any Party may submit the dispute to the [courts of the [insert State]]/[insert name of arbitration centre] for resolution. [The rules of the [insert name of arbitration centre] shall determine the manner in which the dispute is resolved].

11.4 This Agreement and any dispute arising out of it is governed by the laws of [insert State].

12 SIGNATURE

Signed [by]/[for and on behalf of]

the Farmer: [insert name]

[Insert if signing on behalf of the Farmer - Position:]

Signature:

Date:

Done at: [insert location] in the presence of:

Name:

Signature:

Address:

Occupation:

Date:

Signed [by]/[for and on behalf of]

the Sponsor: [insert name]

[Insert if signing on behalf of the Farmer - Position:]

Signature:

Date:

ANNEXES TO SUPPORT THE IMPLEMENTATION OF THE CONTRACT

Any additional information required to support the implementation of the clauses included in the contract should be inserted here as annexes. Examples of such annexes to be developed could include:

Annex W: Product-based quality requirements

Annex X: Production-based quality requirements (including inspection schedule)

Annex Y: Inputs (quality standards, instructions for use, delivery schedule, pricing)

Annex Z: Delivery (technical requirements for delivery, schedule of delivery)

III. ESSENTIAL COMMODITIES (AMENDMENT) ACT, 2020

i) Price Regulation Circumstances

Section 3 of the Essential Commodities Act, 1955 allows Central Government to make certain commodities essential, regulate their production, supply and distribution. This ensures that consumers get a fair price for their products.

The current provision amends section 3 to regulate food items in cases of war, famine, extraordinary price rise and natural calamity of grave nature.

The Act includes extraordinary circumstances but fails to include small level natural incidents (like the locust attacks in 2020), which may occur more often and cause huge loss to farmers.³⁵ Agriculture is a seasonal economic sector and our nation heavily depends on monsoon season for produce of sufficient or surplus production of grains. Majority of farmers in India have small or marginal landholdings. Protection of small farmers would need taking into account small yet high impact natural actions, which would render heavy losses to the farmers.

The draft regulation should also focus on providing explanation or illustrations to define terms like 'extraordinary price rise' or 'natural calamity of grave nature'. The usage and meaning of such terms is subjective and can give rise to legal interpretational disputes.

Suggested Draft of the Section:

'(1A) Notwithstanding anything contained in sub-section (1),—

(a) the supply of such foodstuffs, including cereals, pulses, potato, onions, edible oilseeds and oils, as the Central Government may, by notification in the Official Gazette, specify, may be regulated only under extraordinary circumstances which may include war, famine, extraordinary price rise and natural calamity of grave nature, including but not limited to periodic climatic and natural issues.

ii) Exclusion of Other Essential Commodities in Amendment Act

The Essential Commodities Act, 1955 is primarily targeted at production and distribution of food items, petroleum products and essential drugs. However, the amendment act only regulates food cereals and overlooks petrol, petroleum, jute, hank yarn, fertilizers, and essential drugs from its ambit. The target of this act is majorly farmer's produce and other essential commodities are not subject to similar restrictions.

Due to the nature of commodities, regulation of other essential commodities in the same manner as food products will be difficult, and may not be as useful. However, the draft section should account for regulation of other essential commodities, in manner as legislature deems fit.

³⁵ Kavya Veerla & Tanvi, *An Analysis of Essential Commodities (Amendment) Act, 2020*, Indian Journal of Law and Public Policy, available at <https://ijlpp.com/an-analysis-of-the-essential-commodities-amendment-act-2020/>. (Last Accessed on February 20th, 2021)

iii) Imposition of Stock Limit

The Act authorizes the Centre to regulate stock of essential commodities based on the price rise.³⁶ The two conditions mentioned are i) a 100% increase in the retail price in case of horticultural produce, or (ii) a 50% increase in the retail price in case of non-perishable agricultural food items.³⁷

Both the price limits are set very high, thus making it less likely to be triggered, and rarely causing it to fall. A 100% increase on the price of product prevailing immediately preceding twelve months or average of five years sets a very high threshold to cross. The set price limits might cause increased hoarding of such items. Further, the division of food items into two categories of horticultural produce and non-perishable food items is a very broad one, thus prone to confusion. The division of types of crops should be more detailed based on the consumption of the produce. The commonly used produce in all households, like onions and tomatoes cannot be put on same stock limit as that of exotic produce or plants for ornaments.

³⁶ Summary of the Bill, PRS INDIA, available at <https://www.prsindia.org/node/845727/chapters-at-a-glance>. (Last Accessed on February 20th, 2021)

³⁷ Section 2(1A)(b), Essential Commodities (Amendment) Act, 2020.