

## State Legislative Brief

### MAHARASHTRA

#### Bills amending central farm laws on agricultural marketing

##### Key Features

- Instead of PAN, traders need to obtain a license to trade in any regulated agricultural produce.
- Buyers not paying farmers on time are punishable with minimum three years of imprisonment.
- Dispute resolution will be done by the authorities prescribed by the state government through rules.

##### Issues to Consider

- Licensing requirement may not be necessary to keep control over traders defaulting in payment.
- Delay or default in payment is a civil matter, which is being treated as a criminal offence.
- There is a need to ensure that authorities notified to resolve disputes have the requisite capacity.

**The Supreme Court had put a stay on implementation of the central farm laws. On November 19, 2021, the Prime Minister announced that the government intends to repeal the central farm laws.**

In most states, agricultural markets are regulated by state Agriculture Produce Marketing Committee (APMC) laws. APMCs were set up with the objective of ensuring fair trade between buyers and sellers for effective price discovery of farmers' produce.<sup>1</sup> APMCs can: (i) regulate the trade of farmers' produce by providing licenses to buyers and commission agents, (ii) levy market fees or any other charges on such trade, and (iii) provide the necessary infrastructure within their markets to facilitate the trade. The Parliamentary Standing Committee on Agriculture (2018-19) identified various issues with functioning of the APMCs. Most APMCs have a limited number of traders, which leads to cartelisation and reduces competition. There are undue deductions in the form of commission charges and market fees.<sup>1</sup> The APMC laws are highly restrictive in promoting other channels of marketing (such as private markets, direct sale to buyers, and online sale) and competition in the system.<sup>1</sup>

In 2017-18, the central government released the model APMC and contract farming Acts to allow restriction-free trade of farmers' produce, promote competition through multiple marketing channels, and promote farming under pre-agreed contracts.<sup>2,3</sup> The Standing Committee on Agriculture (2018-19) noted that states had not implemented several reforms suggested in the model Acts.<sup>1</sup> It recommended the central government to constitute a committee of all state Agriculture Ministers to design a legal framework for agricultural marketing. In July 2019, a committee of seven Chief Ministers was set up to propose: (i) adoption and time-bound implementation of model Acts, and (ii) changes to the Essential Commodities Act, 1955 (which regulates production, supply, and trade of essential commodities) to attract private investment in agricultural marketing and infrastructure.<sup>4</sup>

In June 2020, the central government promulgated three Ordinances: (i) Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020, (ii) Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020, and (iii) Essential Commodities (Amendment) Ordinance, 2020, which were subsequently replaced by the farm laws enacted by Parliament in September 2020.<sup>5,6,7</sup> The farm laws: (i) allow traders to buy farmers' produce outside APMC markets without a license or paying any fees to APMCs, (ii) define a framework for contract farming, and (iii) impose stock limits on agricultural produce only on a sharp increase in retail prices. The three laws together aim to increase availability of buyers, facilitate sale of produce under long-term sale contracts, and permit buyers to purchase farm produce in bulk.

Following this, during October-November 2020, a few states passed Bills to modify the applicability of the central farm laws in their states. Punjab and Rajasthan passed Bills to empower the state government to levy a market fee for trade outside the APMC markets and mandate Minimum Support Price (MSP) for sale of produce in specific situations.<sup>8,9</sup> Chhattisgarh amended its APMC Act to allow the state government to notify structures outside APMC markets, such as godowns, cold storages, and e-trading platforms, as deemed markets.<sup>10</sup>

In January 2021, following protests against the farm laws, the Supreme Court stayed their implementation until further orders.<sup>11</sup> In July 2021, three Bills were introduced in the Maharashtra Assembly to amend the central farm laws in their application to the state: (i) Farmers' Produce Trade and Commerce (Promotion and Facilitation) (Maharashtra Amendment) Bill, 2021, (ii) Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Maharashtra Amendment) Bill, 2021, and (iii) Essential Commodities (Maharashtra Amendment) Bill, 2021.<sup>12,13,14</sup> Since these Bills have provisions inconsistent with the central farm laws, they would need the President's assent for enactment.<sup>15</sup> On November 19, 2021, the Prime Minister announced that the government intends to repeal the central farm laws.<sup>16</sup>

## Key Features

Table 1 summarises the amendments proposed by the Maharashtra Bills to the three central farm laws.

**Table 1: Comparison of the three central farm laws with the amendments proposed by Maharashtra**

Provision	Central farm laws	Maharashtra Amendment Bills
<b>Farmers' Produce Trade and Commerce (Promotion and Facilitation) (Maharashtra Amendment) Bill, 2021</b>		
<b>Eligibility to trade</b>	<ul style="list-style-type: none"> <li>For trade of any agricultural produce regulated under any state's APMC Act, traders must have a PAN card or any other document as may be notified by the central government.</li> </ul>	<ul style="list-style-type: none"> <li>Instead, the Bill requires traders to have a valid license granted by the Competent Authority to trade in any regulated agricultural produce. No license or permission will be required for marketing of fruits, vegetables, ginger, garlic, coriander, and chillies.</li> <li>The Competent Authority will be prescribed by the state government through rules.</li> </ul>
<b>Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Maharashtra Amendment) Bill, 2021</b>		
<b>Minimum Support Price (MSP)</b>	<ul style="list-style-type: none"> <li>The Act provides a framework for farmers and buyers (or sponsors) to enter into a sale agreement prior to the production or rearing of any farming produce. The farming agreement may specify the price that buyers will pay to farmers for the sale.</li> <li>In case the price is subject to variation, the agreement must specify a minimum guaranteed price. It should also provide a price reference for any amount in addition to the guaranteed price.</li> </ul>	<ul style="list-style-type: none"> <li>The Bill provides that in case of crops, a farming agreement will not be valid if the price paid to the farmers is lower than the MSP announced by the central government. However, with the mutual consent of farmers and buyers, a farming agreement may be made at a price below MSP for a maximum period of two years.</li> </ul>
<b>Similar amendments proposed by the two Bills</b>		
<b>Dispute resolution mechanism</b>	<ul style="list-style-type: none"> <li>The central Acts provide a three-tier dispute resolution mechanism for disputes between farmers and buyers. All disputes must be first referred to a Conciliation Board, consisting of representatives of the parties, for resolution. The Board will be appointed by the Sub-Divisional Magistrate (SDM) or provided under the farming agreement (as the case may be).</li> <li>If the dispute remains unresolved after 30 days, the parties may approach SDM for resolution, who will resolve the dispute within 30 days. Further, any party can appeal against the SDM's order to the Appellate Authority, who will be the Collector or an Additional Collector nominated by him.</li> </ul>	<ul style="list-style-type: none"> <li>The Bills propose certain changes in the dispute resolution mechanism for disputes between farmers and buyers. As per the Bills, the Conciliation Board will be a part of the dispute resolution process only if the sale was made under a farming agreement.</li> <li>The parties may file an application to the Competent Authority, who will decide the dispute within 30 days. Further, any party can appeal against the order of the Competent Authority to the Appellate Authority.</li> <li>The Competent Authority and Appellate Authority will be prescribed by the state government through rules.</li> </ul>
<b>Penalty for not paying farmers on time</b>	<ul style="list-style-type: none"> <li>For the traded produce, traders must make payment to farmers on the same day or within a maximum of three working days. Any violation of this provision will be punishable with a fine of at least Rs 25,000, but not more than five lakh rupees.</li> <li>In case of sale under farming agreements, if buyers fail to pay the amount due to farmers, the amount of penalty will be decided by SDM during dispute resolution (maximum 1.5 times of the amount due).</li> </ul>	<ul style="list-style-type: none"> <li>If traders do not pay farmers within seven days of the delivery of produce, or in accordance with the terms of the agreement, whichever is earlier, such traders will be punished with a minimum: (i) three years of imprisonment or (ii) fine of five lakh rupees, or both.</li> <li>In case of sale under farming agreements, if buyers do not pay farmers in time or as per the farming agreement, such buyers will be punished with a minimum of three years of imprisonment.</li> </ul>
<b>Essential Commodities (Maharashtra Amendment) Bill, 2021</b>		
<b>Regulation of food items</b>	<ul style="list-style-type: none"> <li>The Act empowers the central government to regulate the production, supply, distribution, storage, and trade of essential commodities. The Act was amended in 2020 to provide that the central government may regulate the supply of food items only under extraordinary circumstances. Such circumstances include war, famine, grave natural calamity, and extraordinary price rise. Further, stock limits can be imposed only if the retail prices increase beyond a specified level.</li> </ul>	<ul style="list-style-type: none"> <li>The Bill empowers the state government to regulate or prohibit the production, supply, and distribution and impose stock limits under extraordinary circumstances. Such circumstances may include famine, price rise, or natural calamity.</li> </ul>

Sources: Central Farm Laws; Maharashtra Amendment Bills; PRS.

## Issues for Consideration

### Legislative framework to enact or amend the farm laws

Agriculture is a subject under the State List of the Seventh Schedule of the Constitution.<sup>17</sup> Agricultural markets in India are mainly regulated by the state APMC laws. In September 2020, Parliament passed three farm laws to: (i) allow traders to buy farmers' produce outside APMC markets without requiring a license or paying any fees, (ii) define a framework for contract farming, and (iii) impose stock limits on agricultural produce only on a sharp increase in retail prices, respectively. During the discussions in Parliament, the first two laws were opposed on the grounds that Parliament does not have the legislative competence to enact these laws.<sup>18</sup> In response to a Parliamentary Question, the central government stated that these laws have been enacted under Entry 33 of the Concurrent List (which relates to trade and commerce in, and production, supply and distribution of various commodities, including food items).<sup>19</sup> Following the enactment of the farm laws, various petitions were filed in the Supreme Court to challenge their constitutional validity, which are still pending.<sup>11</sup>

The three Maharashtra Bills seek to amend the respective farm laws in their application to the state. Since these Bills include various provisions that are inconsistent with the central farm laws, they would need the assent of the President for enactment, as per Article 254(2) of the Constitution.<sup>15</sup>

### Requirement for traders to get a license

#### License may not be necessary to keep control over traders defaulting in payment

The Farmers' Produce Trade and Commerce Act, 2020 aims to increase the availability of buyers for farmers' produce. It allows buyers to trade outside the APMC markets without a license, so that an increase in competition among them results in better prices for farmers. To trade in any regulated agricultural produce, buyers need to have a PAN card or any other document notified by the central government. The Maharashtra Bill amends this to require traders to obtain a license from the Competent Authority to trade in any regulated agricultural produce (except fruits, vegetables, ginger, garlic, coriander, and chillies). As per the Statement of Objects and Reasons of the Bill, in the absence of a licensing mechanism, there will be no control over traders if they default in paying farmers for their produce. The question is whether a license is necessary for this purpose given that the trader can be uniquely identified using the provisions of the central Act through his PAN (or any other identity document that may be notified).

A Working Group of the Planning Commission (2011) had noted that licensing systems create entry barriers for new buyers of agricultural produce.<sup>20</sup> According to NITI Aayog (2016), the practice of compulsory licensing of commission agents/ traders in APMC markets has led to the creation of monopolies for market functionaries.<sup>21</sup> Traders, commission agents, and other functionaries in APMC markets organise themselves into associations.<sup>22</sup> They do not allow easy entry of new persons into market yards, thus stifling competition. A Committee set up by the Planning Commission to encourage investments in farm supply chains (2012) had recommended that licensing should be replaced by registration of traders along with submission of bank guarantees.<sup>23</sup> Note that, under the Maharashtra APMC Act, a security deposit or bank guarantee must be submitted to obtain a license for direct marketing or setting up private markets or e-trading platforms.<sup>24</sup> Further, the Act empowers APMCs to recover any fees or penalties due to be paid by a trader from his security deposit and bank guarantee.

#### No mechanism for traders to appeal against refusal of license

Under the Bill, traders are not allowed to trade without obtaining a license from the Competent Authority. The manner of applying for a license and granting it will be prescribed by the state government through rules. However, the Bill does not specify any mechanism for traders to appeal against the decision of the Competent Authority if it does not grant a license. Note that as per the licensing mechanisms prescribed under the Maharashtra APMC Act, traders can appeal to the Director of Agricultural Marketing or the state government (as the case may be) against the orders refusing to grant them a license or renew it.<sup>24</sup>

#### Criminal liability on buyers not paying farmers on time may be unreasonable

Under the central Acts, if any person or entity buying produce from farmers does not pay them on time or fails to make the payment, they are liable to pay a penalty. The Maharashtra Bills add that if the buyers do not pay farmers on time or as per the terms of the agreement, they will be guilty of committing a criminal offence. In cases involving a farming agreement, such buyers will be punished with minimum three years of imprisonment. For other forms of trading, traders not paying within seven days of delivery or as per the agreement, whichever is earlier, will be punished with a minimum of: (i) three years of imprisonment or (ii) fine of five lakh rupees, or both. The two sets of amendments create criminal liability without requiring that default/ delay in payment to farmers is accompanied by any fraudulent or dishonest intent. This raises two questions. First, whether a civil matter such as default/ delay in payment should be treated as a criminal offence punishable with imprisonment. Second, as the Acts already empower the dispute resolution authorities to penalise any default in payment, whether the same offence should be punishable with civil as well as criminal liability under the same law.

*The Farmers' Produce Trade and Commerce (Maharashtra Amendment) Bill:*  
Clause 4

*Central Act:*  
Section 4(1)

*The Farmers' Produce Trade and Commerce (Maharashtra Amendment) Bill:*  
Clause 6

*Central Act:*  
Sections 11, 8(7)(b)

*The Farmers Agreement on Price Assurance and Farm Services (Maharashtra Amendment) Bill:*  
Clause 9

*Central Act:*  
Section 14(2)(b)(i)

A default or delay in payment may be a simple case of a breach of contract with no fraudulent or dishonest intent, and may be liable for a penalty (as under the central Acts). Laws such as the Income Tax Act, 1961 provide for a monetary penalty (and penal interest) in case of delay in payments. The Supreme Court (2000) has observed that there is a distinction between mere breach of contract and the offence of cheating, which can be determined based on the intention of the accused.<sup>25</sup> It noted that mere breach of contract cannot lead to criminal prosecution for cheating unless fraudulent or dishonest intention is shown in the beginning of the transaction (when the offence is said to be committed). The central government, when decriminalising certain offences, also noted that *mens rea* (malafide/ criminal intent) plays an important role in imposition of criminal liability.<sup>26</sup> This makes it critical to evaluate the nature of non-compliance, i.e., fraud or negligence or inadvertent omission. Further, it noted that the risk of imprisonment in such cases increases burden on businesses and is a big hurdle in attracting investments. The Bills do not make such distinction in prescribing the punishment for the offences.

Note that as per the Code of Criminal Procedure, 1973, the offences prescribed by the Bills will be classified as cognisable and non-bailable, as the Bills do not specify otherwise. This implies that buyers not making payment to farmers on time may be arrested by the police without warrant and cannot be released on bail. Further, the Bills, while specifying the minimum punishment, do not specify any maximum punishment for these offences.

The central Acts seek to provide a quick and cost-effective dispute resolution process.<sup>27</sup> They bar civil courts from hearing disputes between farmers and buyers, and empower dispute resolution authorities to impose a monetary penalty, including for any default in payment. The Maharashtra Bills additionally make default in payment a criminal offence. If the same offence is punishable with civil as well as criminal liability, it may lead to multiplicity of cases. Given the high pendency in courts and time taken to resolve disputes, it is important to find a balance so that while malafide intent is punished, less serious offences are penalised with penalties.<sup>28</sup>

### **Authorities responsible for dispute resolution not defined in the Bills**

*The Farmers' Produce Trade and Commerce (Maharashtra Amendment) Bill:*  
Clauses 3(1), 5  
*Central Act:*  
Sections 8, 15

The central Acts empower the Sub-Divisional Magistrate (SDM) and Collector to resolve disputes arising between farmers and buyers in their jurisdiction. As per the Statement of Objects and Reasons of the Maharashtra Bills, considering the work load on these revenue authorities (SDM and Collector), it may not be possible for them to give sufficient time to resolve disputes within 30 days. The Maharashtra Bills amend this and provide for a Competent Authority and an Appellate Authority instead to resolve such disputes. These authorities will be prescribed by the state government through rules. It may be argued that such authorities should be specified in the law instead of being specified through delegated legislation.

*The Farmers Agreement on Price Assurance and Farm Services (Maharashtra Amendment) Bill:*  
Clauses 3, 5  
*Central Act:*  
Sections 14, 19

The Bills provide that on disputes between farmers and buyers, the Competent Authority (on farming agreement disputes) and Appellate Authority (on all disputes) will have the powers of a civil court. These Authorities replace the role of SDM and Collector, respectively. Note that the central Acts bar civil courts from hearing any matter that can be decided by the authorities empowered under the Acts. This implies that the orders issued by the Appellate Authority cannot be challenged further in a civil court. However, as the Bills do not specify if these authorities are administrative or judicial in nature or their level, it is unclear whether they would have the qualifications necessary for resolving disputes in a fair manner. Defining the authorities in the Bills may be needed to ensure that persons who are given the powers for dispute resolution have the necessary capacity.

### **Discretionary powers to impose stock limits on agricultural produce**

*The Essential Commodities (Maharashtra Amendment) Bill:*  
Clause 2

*Central Act:*  
Section 3(1A)(b)

Parliament amended the Essential Commodities Act, 1955 in September 2020 to provide that stock limits may be imposed on agricultural produce only if there is a sharp increase in retail prices (100% increase in case of horticultural produce and 50% increase in case of non-perishable agricultural food items). Further, these stock limits will apply to processors and other participants in value chain (from production to final consumption) only if they store beyond their processing capacity. The Maharashtra Bill amends this to allow the state government to impose stock limits under various extraordinary circumstances, such as famine, price rise, and natural calamity. This reverses the provisions of the central Act.

The central government noted that the 2020 amendments to the Essential Commodities Act seek to remove the fear of frequent statutory controls under the Act.<sup>28</sup> It noted that while India has surplus production for most agricultural commodities, there is a lack of investment in cold storage, warehouses, processing, and export as entrepreneurs get discouraged by the regulatory mechanisms under the Act. As a result, farmers have been unable to get better prices. In the absence of the fear of stock limits, investors would procure a larger quantity, the market would see more investment and competition, and farmers will get better prices for the produce.<sup>29</sup>

As per the Statement of Objects and Reasons of the Maharashtra Bill, the central Act does not provide the state government any power to regulate the production, supply, or distribution of produce by imposing stock limits under extraordinary circumstances. The Bill seeks to provide these powers to the state government. However, these powers to impose stock limits are discretionary in nature. Unlike the price mechanism defined in the Act for imposing stock limits, this amendment gives discretion to the state government to do so under extraordinary circumstances. This widens the scope of when the state may impose stock limits. If these powers are exercised frequently, the fear of frequent statutory controls may remain and continue to affect investments in the market.

## Farming agreements to be invalid if the price paid is below MSP

The central Act regulates contract farming, where buyers and farmers enter into a contract (farming agreement) for trade of farmers' produce. The contract may specify mutually agreed terms and conditions for supply of produce, its quality, standards, and purchase price (and a guaranteed price if this is variable). Contract farming aims to guarantee farmers an assured buyer, and buyers an assured supply, at a pre-determined price. The regulatory framework seeks to protect and empower farmers to engage with buyers for future sale at a mutually agreed remunerative price, in a fair and transparent manner.<sup>6</sup> The Maharashtra Bill declares farming agreements invalid if the price paid to farmers is below the MSP announced by the central government. It is unclear why MSP is mandated for sale under a private contract as it is a guaranteed price paid for government procurement. Linking the purchase price with MSP may disincentivise contract farming, when market prices are below MSP.

MSP is the assured price for procurement of foodgrains from farmers by the central and state governments and their agencies.<sup>30</sup> While, MSP is announced for 23 crops, public procurement is limited to a few foodgrains such as paddy, wheat, and, to some extent, pulses.<sup>31</sup> As a result, very few farmers sell their produce to government agencies and most agricultural produce is sold in local or APMC markets.<sup>32</sup> Therefore, the price a farmer gets for his produce is not linked to MSP, and is based on the demand-supply conditions in the market at that time.

Note that the proportion of agricultural households presently selling their produce through contract farming is already very low.<sup>32</sup> According to the National Sample Survey for 2018-19, in Maharashtra, the share of agricultural households selling most of their produce through contract farming was merely 0.2% for gram and 0.1% for soyabean (and negligible for the other crops surveyed, i.e., paddy, wheat, arhar, jowar, and cotton).<sup>32</sup>

The Bill allows farmers and buyers to, with mutual consent, enter into farming agreements at a price below MSP for maximum period of two years. It is unclear if one could enter into such short-term agreements indefinitely. If so, this would defeat the purpose of setting the floor price in agreements at MSP.

## Rules to be prescribed by the state government

The central Act empowers the central government to make rules on all matters under the Act. The Maharashtra Bill amends the definition of 'prescribed', which transfers all the rule-making powers of the central government to the state government. This includes the power to make rules on: (i) electronic registration system for traders, (ii) mode of payment for traders and Farmer Producer Organisations (FPOs), (iii) information required to be provided by electronic trading platforms about their transactions, and (iv) filing and disposal of an appeal against cancellation of the 'right to operate' of electronic trading platforms. It may be possible that some of these changes in the rule-making powers are unintentional and due to a drafting error. For instance, the Bill does not seek to make any changes specific to electronic trading platforms, yet transfers rule-making powers related to it to the state government. As a result, the Bill provides that the state government will prescribe the procedure for disposal of appeals by an officer of the central government (of Joint Secretary rank or higher).

## Annexure: Comparison of the amendments proposed by states to the central farm laws

In addition to Maharashtra, two other states, i.e., Punjab and Rajasthan, have proposed to amend the central farm laws. The Table below compares the Maharashtra amendments to that of the other states and the central laws.

**Table 2: Comparison of the amendments proposed by Maharashtra and other states and the central laws**

Provision	Central farm laws	Maharashtra	Punjab	Rajasthan
<b>Eligibility to trade</b>	<ul style="list-style-type: none"> <li>PAN card or any other document as may be notified</li> </ul>	<ul style="list-style-type: none"> <li>License (not required for fruits, vegetables, chillies, coriander, ginger, and garlic)</li> </ul>	<ul style="list-style-type: none"> <li>No amendment</li> </ul>	<ul style="list-style-type: none"> <li>No amendment</li> </ul>
<b>Penalty for not paying farmers on time</b>	<ul style="list-style-type: none"> <li>Fine of at least Rs 25,000, but not more than five lakh rupees</li> <li>Maximum 1.5 times of the amount due (in farming agreement)</li> </ul>	<ul style="list-style-type: none"> <li>Minimum three-year imprisonment or fine of Rs 5 lakh, or both</li> <li>Minimum three years imprisonment (in farming agreement)</li> </ul>	<ul style="list-style-type: none"> <li>No amendment</li> </ul>	<ul style="list-style-type: none"> <li>No amendment</li> </ul>
<b>Dispute resolution authorities</b>	<ul style="list-style-type: none"> <li>SDM and DM</li> <li>Bar on civil courts</li> </ul>	<ul style="list-style-type: none"> <li>Competent Authority and Appellate Authority (prescribed through rules)</li> <li>Bar on civil courts</li> </ul>	<ul style="list-style-type: none"> <li>SDM and DM</li> <li>No bar on civil courts</li> </ul>	<ul style="list-style-type: none"> <li>APMCs</li> <li>Bar on civil courts</li> </ul>
<b>Minimum Support Price</b>	<ul style="list-style-type: none"> <li>No provision</li> </ul>	<ul style="list-style-type: none"> <li>Only for farming agreements (two-year exemption)</li> </ul>	<ul style="list-style-type: none"> <li>Only for two crops (paddy and wheat)</li> </ul>	<ul style="list-style-type: none"> <li>Only for farming agreements</li> </ul>

Sources: Central Farm Laws; Amendment Bills of Maharashtra, Punjab, and Rajasthan; PRS.

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