The Enforceability of Farming Agreements in India-Insights from a Legal Perspective

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ABSTRACT

Background: The recently passed and repealed farming agreement legislation in India was designed to empower the farmers to enter into contracts with the agri-business firms, exporters, wholesalers, retailers to directly trade their farm produce outside the designated APMC market. An exploration of the studies relevant to farming agreements/contract farming indicates that it has promising benefits in terms of security, increased income and quality production only if the parties engage in fair contractual practices.

Methods: In this context the present paper critically examines the text of the repealed farming agreement legislation in India by largely focussing upon the provisions that are connected with the enforceability of farming contracts.

Result: As the contractual relationship between the parties is the vital element in the successful implementation of the farming agreements, this paper has spelt out the statutory provisions that safeguard the interest of both the parties and also those ambiguous provisions that were likely to give scope for exploitation of small farmers. In conclusion, the responsibility of the government and other stakeholders is discussed to boost the enforceability of farming agreements in India and concrete suggestions are given to secure and protect the rights of both the parties involved in it.

Key words: Contract farming, Contractual obligations, Enforceability, Farming agreement.

The small farmers across the developed and developing economies face conventional problems such as pre-harvest and post-harvest losses, storage losses, market fluctuations, obstacles in market accessibility, uncertain weather, high cost of fertilizers and agro-chemicals, transportation *etc*. The system of contract farming practices provides advantages to both the farmers and private firms in terms of security against risk and uncertainty, assured market, price stability, and increasing quality and quantity of yields (UNIDROIT/FAO/IFAD Legal Guide on Contract Farming-2015; Shukla *et al.*, 2011). The contract may be entered by a farmer obligating the private buyers/firms to provide farm services such as seeds, farm machinery, agro-chemicals, technical advice and aid, storage facilities, packing and transportation *etc*. Likewise, simple sale agreements can be signed by the farmers at the time of planting by specifying the quantity, quality of produce that the private firm will buy and the price agreed to be paid by them. This system of direct trading by farmers in India protects them from the exploitation by the middlemen who charge commissions or procure the farm produce below the minimum support price. Contract farming has long been practised in developed countries where it accounts for 15% of agricultural output (Martin, 2012). On the other hand, degradation of soil quality and its adverse effect on the environment, lack of bargaining power of the small farmers, ambiguous and technical contractual clauses, exploitation of small farmers are some of the problems existing in farming agreement practice (Erkan, 2012; Deshpande, 2005). An exploration of the studies relevant to farming agreements/contract farming indicates that it has promising benefits only if the parties engage in fair contractual practices (Erkan, 2012; Deshpande, 2005).

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In this context the present paper critically examines the text of the repealed farming agreement legislation in India by largely focussing upon the provisions that are connected with the enforceability of farming contracts. The repealed legislation is, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (Here in after referred to as Contract Farming Act 2020).

Evolution of farming agreements and the legal framework in India

The recent passage and the repeal of the farming agreement legislation in India, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (Here in after referred to as Contract Farming Act 2020) was designed to empower the farmers to enter into a contract with the agri-business firms, exporters, wholesalers, retailers to directly trade their farm produce outside the designated APMC market. However, contract farming practice is not unfamiliar to India as it dates back to the British rule that originally started with trading of cotton and tobacco which further included sugarcanes and seeds at the beginning of the 1950's (Braja Bandhu Swain, 2016). Post-independence, it has been predominantly practiced in states like Punjab, Tamil Nadu, Andhra Pradesh, Haryana and Maharashtra (Braja Bandhu Swain, 2016). The important policy reports and allied documents in India such as the National Agricultural Policy (2000), Report of Task force on Agricultural Marketing Reforms (2002), National Policy for Farmers (2007), Occasional Paper-42 NABARD (2005) *etc* have endorsed contract farming in Indian agriculture. The contract farming practiced in producing wheat in Madhya Pradesh by Hindustan Lever Ltd, tomato, basmati rice, chillies, groundnuts in several districts of Punjab by PepsiCo Co., Barely in Belgaum by Ugar Sugar Works, coffee by Nestle, ITC's e-choupal *etc* are some of the notable successful farming agreements projects in India (The National Institute of Agricultural Extension Management, 2003). The crucial elements for their success were active use of technology and technical assistance, free supply of agricultural implements, transparency and timely payment to contracted farmers, sound R&D program, partnership with local agencies *etc* (The National Institute of Agricultural Extension Management, 2003). On the other hand, relevant literature indicates enforceability of the agreement and standardisation of contract farming agreements as the primary challenges in contract- farming ventures in India (NABARD, Department of Economic Analysis and Research, 2005).

The Contract Farming Act, 2020 provided an enumerative definition of farming agreement *viz*; simple agreement to sell the produce with full control vested in the farmer during production, an agreement to supply farm services wherein the private firms bear the risk of output, but guarantee payment to the farmer for the services rendered and alike agreements (Explanation to Sec 2(g)- Contract Farming Act, 2020). The Act provided the components and terms and conditions that the farming contracts should indicate, including quantity of farming produce, contract duration, mutually acceptable quality, pricing of the produce and terms related to supply of farm services (Section 3 and 4 - Contract Farming Act, 2020). The quality of the farming produce shall be monitored and certified during the cultivation phase or at the time of delivery, by a neutral third party known as qualified assayers (Section 4(4), Contract Farming Act, 2020). This provision guarantees fairness, prevents the risk of exploitation of farmers and manipulation by private buyers. Considering the fluctuating price of the contracted farming produce between the time gap when the price is fixed upon by mutual written agreement and the date of delivery, the act provided for the possibility of determining the guaranteed price or an additional amount to the guaranteed price in the farming agreement that ensures best value to the farmers with pre-established price calculation formula annexed to the agreement (Section 5, Contract Farming Act, 2020). The onus was on the buyer to ensure all arrangements including transportation for the timely acceptance of such delivery [Section 6(b), Contract Farming Act, 2020]. It also contained other provisions that the farming agreements should include, such as the force majeure clause and conciliation process to settle disputes. When the buyer commits the breach of contract in regard to payment of the amount due to the farmer, the competent authority may impose such a penalty that may extend to one and half times the amount due [Section 14(2)(b)(i), Contract Farming Act, 2020]. Most importantly, the Act explicitly prohibited the buyers/private firms from having any ownership rights including sale, lease and mortgage of the land belonging to the contracting farmers.

Enforceability problems of the contract farming act 2020

Although the Contract Farming Act, 2020 was an attempt to bring a comprehensive legislation on the subject, several key aspects in regard to vital measures to prevent exploitation of farmers was unaddressed. Upon careful scrutiny of the text of the repealed Contract Farming Act, 2020, the bigger concern evident is regarding the full understanding of the contractual obligations between the parties and in all probability the farmers not being clear about a significant part of the contracts. Another issue that adds to this concern is unequal bargaining power in farming agreements due to lack of knowledge of market forces, complex technical language *etc*. In response to these challenges some countries have initiated bargaining cooperative associations which provide various services to contracting farmers such as collecting market information, aiding in contract analysis and negotiations *etc* (Erkan 2012).

Additionally, the act did not spell out the legal consequences related to situations like the farmers failing to follow the buyer's instructions when the latter provides farm services like technology, advice or such other inputs. Likewise, the liability of the buyer/private firms is unclear when the farming services/inputs provided by them are deficient, defective or delayed. Therefore, certification of farming services/input quality and its continuous monitoring by an expert independent entity is desirable (UNIDROIT/ FAO/IFAD Legal Guide on Contract Farming-2015). It may be also used to check the uncontrolled application of the agro-chemicals to the land of the contracting farmers which could possibly reduce the threat of soil degradation and land utility for future cultivation. There were no explicit provisions on effects of quality standards default, price reduction, complete rejection of the contracted farming produce, price adjustment/re-negotiation clauses *etc*. Price reduction is a common solution adopted by most jurisdictions in case of breach for nonconformity or for partial delivery (UNIDROIT/ FAO/IFAD Legal Guide on Contract Farming-2015). It is an equitable measure to give the parties the freedom for renegotiation of prices in the event of unforeseen circumstances, such as in market conditions leading to large differences in price with respect to the contracted terms (FAO, 2012).

Conclusion and Suggestions

Contract farming is undoubtedly one such measure which will liberate the small farmers from the compulsion and pressures of landlords, middlemen and financers. Regardless of the benefits of contract farming, weak bargaining power of the farmers, information asymmetry in farming agreements, ambiguities and inadequate understanding of complex contractual clauses are some of the obstacles associated with its beneficial implementation. Few measures by the Government in terms of standard farming agreements and guidance documents with the use of clear and simple language/local language, setting up of bargaining cooperatives and competent certification agencies to empower the farmers to understand the terms of the contract, their rights and obligations, information on market forces, quality of inputs used *etc* will help in successful enforceability of farming agreements in India. Additional measures/incentives by the state government to push the private firms to contract with smallholder farmers who form the majority of Indian agriculture is desirable.

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