

# **An Analysis of Farming Laws in Terms of Philosophy of Social Contract and Liberalization**

**By**

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## **Abstract**

The recently introduced Farm Laws in India highlight a paradox within the basic characteristics of the nation such as socialism and democracy and the new age legislators who seem to have forgotten about the state's responsibility for the welfare of its people. A shift towards neo-liberal governmentality can be reflected from these reforms in the farming sector. The complexities involved in Indian Agricultural Markets are governed by various political and economic factors. Progress in understanding these complexities can be made by referring to the theory of Social Contract as propounded by various jurists. The validity of the reformation in farm sector has to be derived from jurisprudential studies clubbed with reality.

**Keywords:** Farm Laws, Indian Agriculture System, Liberalization, Social Contract Theory, Social Welfare, Welfare Capitalism.

## **1. Introduction**

India adopted its Constitution with progressive and inclusive features such as socialism, democratic republic, equality, fundamental rights, fundamental duties and freedom. The legislators have a robust document to follow each time they make laws and policies. The ultimate aim of any democracy is the welfare of its state by the way of certain accepted theories. The jurists have long contributed to the evolution of Social Contract Theory which differentiates a monarchy from a democracy. The dynamic legal and political atmosphere has even led to the creation of an Integrative Social Contract Theory. When one looks at the current systems in India, suitability of the Integrative Social Contract Theory matches the best. But this doesn't give a license to devolve the socialistic feature of the nation. While analyzing the new farming sectors laws, it can be noticed that the State institutions which have the role in balancing and maintaining the post-harvest activities like marketing and storage have been targeted and, in a way, dissolved. There no doubt that the Indian Farming Sector requires a revolution in terms of various areas starting from abolition of intermediaries, reformed marketing committees and price realization of the produce. The farmers face extreme distress sometimes leading to fatal decisions such as suicides to get away from the debts that are a result of poor price realization and piled up credit. The need of the hour is not to involve corporates at this stage by liberalizing the whole market and putting a veil on the state responsibility to deal with the crisis, instead reformation of the existing institutions and legalizing the Minimum Support Price for farmers is what will fight the

challenges.

## **2. ANALYSIS OF AMENDS TO INDIAN AGRICULTURE SYSTEM IN 2020**

Agricultural legislations are inclusive part of the development process of Indian agriculture and changing the socio-economic conditions of a society. A new sun arose for Indian agriculture when the government decided to introduce laws in the farming sector to achieve the goal of doubling farmers' income by 2022. The government has built a narrative that the laws put forward a liberalized market for the farmers enabling them better price discoveries, open market and cutting down the monopoly of the State institutions such as Agricultural Produce Market Committee (APMC) and Food Corporation of India (FCI). The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 aims to provide farmers the freedom to sell outside their designated APMCs to realize appropriate price for their produce. The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020 focuses on creating avenues for farmers to engage in contract farming through verbal or written contracts. This paves the way for farmers to access the variety of national as well as corporate markets. This was an attempt to deregulate the markets and accelerate the commercial outcomes of the post-harvest activities which majorly includes marketing of the agricultural produce. Pre and Post-harvest activities involving private sector intervention increases the farmers' distress. Principles of contract say that two equal parties, agreeing on the same terms should come together to bind themselves in a contract and thus the production, marketing or other similar contracts between these small and marginal farmers and robust entities of the market will lead to exploitation of the meek farmer.

Small and marginal farmers account for about 85% of the total farm land holdings in India i.e. the average size of farm land holding is 1.08 hectare.<sup>1</sup> The plight of these farmers is that with these small land holdings they can barely take out enough for their own consumption. To support them the Minimum Support Price and Public Distribution System have been benefiting as they can sell their produce for appropriate price. The newly introduced welfare capitalism where the corporates will take over markets thereby controlling the agricultural practices, the farmers are turning into mere laborers over their own land and they are being deskilled of the bargaining and negotiating powers that they had earlier. The legitimacy of these laws is questioned on the basis of various theories imbibed in the Indian Constitution.

India adopted its Constitution with certain principles embedded in various provisions all throughout the document and the same has been perpetually reflected by various judicial pronouncements as well. One of such vital principles is the concept of welfare state. Certain affairs in this democratic setup are managed by the government for the maximum benefit and welfare of the citizens of the nation and public in general. These tasks are said to be under the monopoly of the State as the citizens elect their representatives in a democracy for progress and improvements in these sectors and peripheral areas. But studies have argued that in recent past traces of neoliberal governance in India can be located thereby reducing the role

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<sup>1</sup> Government of India, Ministry of Agriculture and Farmers Welfare (2019) Categorization of Farmers. Available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1562687> (Accessed: 30 November 2022).

of State as an agent of common welfare.<sup>2</sup> Although while considering certain parameters and neglecting others, it can be seen that growth rate has increased in this neoliberal agenda but it has also been criticized equally for primarily benefiting a small section of the Indian population and ultimately increasing the inequality levels in the country.<sup>3</sup> The farm laws in the skin of farm reforms as suggested by many agricultural experts where privatization has been invited with open hands and the farmers (both small and marginal) are made to believe in the liberalization of the market by expanding the scope of marketing of the agricultural produce in the coming times. The growing distress amongst farming households has been majorly due to low investments in irrigations, insurance, power, post-harvest marketing, storage & processing, research & development.

Emotional stress has arisen amongst the farmer community because of paralytic Agricultural Marketing Produce Committee and Minimum Support Price due to newly introduced reforms. These were two strong government institutions on which the farmer had faith and this binds the government to work in welfare of the agri-industry of the Nation. It is rather un-dubious to assume that the Indian Agriculture awaits a 'Second Green Revolution' which is much needed but it is all the more crucial to understand that such revolution is required in areas of government control and not by deregulation of these institutions. Revolution shouldn't forget the farmer rights in transit.

### **3. BALANCE BETWEEN LIBERAL MARKETS AND LABOR RIGHTS**

Neoclassical economists have started regarding India as a capitalist nation now where allocation of resources if left to market forces, will result in optimal allocation of resources.<sup>4</sup> According to this view a free and liberal market and a free trade therein will help a developing nation like India to exploit the various advantages in a labor-centric manufacturing and agriculture based economy. But these economists tend to forget that economics are influenced by various social factors. It most definitely depends on the social structure existing and the institutions around it. Markets as they really exist do not accord to this hypothesized ideal, rather, they are embedded in wider social structures of values and institutions.<sup>5</sup> The sudden change in the Farm Laws in India and the conflict around it has been politically driven without any relevant and major discussions with the Farmer Organizations in the country. Therefore this makes us believe that markets are not away from political influences rather one might find politics in different social structures as well. This political agenda is usually not apparent but a deeper study of the legislations with such kind of government interventions will lead us to find it hidden. There is no clear analogy or algorithm for regulation of the markets by the State. Thus it is appropriate to conclude that liberalization is not beneficial in diminishing various social and structural constraints in a market.

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<sup>2</sup> Rohit Varman, Per Skalen and Russell W. Belk (2012) Conflicts at the Bottom of the Pyramid: Profitability, Poverty Alleviation and Neoliberal Governmentality. *Journal of Public Policy & Marketing* Vol. 31(1): 19-35.

<sup>3</sup> Rohit Varman, Per Skalen and Russell W. Belk (2012) Conflicts at the Bottom of the Pyramid: Profitability, Poverty Alleviation and Neoliberal Governmentality. *Journal of Public Policy & Marketing* Vol. 31(1): 19-35.

<sup>4</sup> Chandana Ghosh and Ambar Nath Ghosh (2019) Neoclassical Economics and Capitalism. In: Chandana Ghosh and Ambar Nath Ghosh (ed) *An Introduction to Economics: Economic Theory and Society*. Palgrave Pivot, pp. 13-55

<sup>5</sup> Matthew McCartney (2006) Liberalisation and Social Structure: The Case of Labour Intensive Export Growth in South Asia. In: Edward Fullbrook (ed) *Real World Economics*. Anthem Press, pp. 259-266

## **4. AN UNDERSTANDING OF THE SOCIAL CONTRACT THEORY**

The evolution of social contract theory has seen many days and nights, many jurists propounding their own understanding of the concept different from others and the way of politics and economy under the ambit of this theory. Social contract gradually became a way of thinking about the governmentality. Human authorities are established by agreement with their subjects for specific tasks, that their legitimacy depends upon fulfilment of these tasks and that such agreements may be enforced by clear, defined procedures, as one would enforce a contract in private law.<sup>6</sup> The juristic interpretation of this doctrine says that the sovereign is obliged to uphold the contracts entered into with the subjects. Certain arguments that followed was the difficulty in justifying the resistance of the contracts on theological grounds. These were gradually dismissed when a strong analogy started building up between civil society and commercial partnership.<sup>7</sup> This however didn't bring contracts as a basis of political associations to the front by various jurists. Instead insistence upon the equality of treatment as a principle of contractual partnership was highlighted by many moralists.

The idea of contract was later accepted in politics and propaganda as polity works on the basis of sanctity of promises and when the social environment was turning into commercial. Much organized and developed contract theories have been propounded by Hobbes, Locke and Rousseau. The modern social contract theory that these propounders have extended includes the theoretical arguments for a social contract that could help transform the government of societies. According to Hobbes, man in a society and the authority that has power over this man, must both agree to live together for the social contract and the laws that it constitutes. Sovereign being the authority invested with power to put sanctions on the breach of such contracts, the subjects usually have good enough reason to adjust themselves to the artifice of morality in general and justice in particular.

There are certain obligations for both the parties in this social contract. As pointed earlier the sovereign is obliged to uphold the contracts entered into with the subjects and the citizen has an obligation to obey the various laws made even though the obedience may come with certain problems or could be life-threatening. The power that this sovereign holds to make possible the cooperation from the subjects to follow the law sometimes leads to arbitrariness. Contemporary theorists like John Rawls and David Gauthier have proposed an understanding of the social contract where the relational moral frameworks were informed by self-awareness and recognition of the other rather than by external enforcements from the society through the sovereign.<sup>8</sup> This has given us a well-informed thought that both individuals and governments have to play an important role in the development of societies. There has been an inevitable shift in the balance of economic and political power and this phenomenon has led us to review the existing social contract theory from the perspective of a more supportive state in the changing and rising market. The exact shape of the theory has to be explored and thereafter a decision has to be taken for its resurrection.

Debates revolve around a more liberal dimension to modern society where individual

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<sup>6</sup> Antony Black (1993) The Juristic Origins of Social Contract Theory. *History of Political Thought* Vol. 14 (1): 57-76

<sup>7</sup> Antony Black (1993) The Juristic Origins of Social Contract Theory. *History of Political Thought* Vol. 14 (1): 57-76

<sup>8</sup> David C. Perry and Natalia V. Duarte, The Social Contract: A Political and Economic Overview. In: Michael A. Pagano (ed) *Remaking the Urban Social Contract*. University of Illinois Press, pp. 3-32.

liberal ideologies to exercise entrepreneurial freedom means to provide the individual with private property rights, free market and free trade (free from government interventions). The state has to take all necessary steps to facilitate these practices and creating such markets. This however gives rise to welfare capitalism which as discussed earlier gives birth to disparity in the society's economic powers. In Germany there has been anger against the post-conservative welfare policies introducing liberalized world of welfare capitalism. An epidemic of anxiety prevails amongst individuals for increased responsibilities in more spheres of lives where once the government had control. The modification and deregulation of the market regime leading to increased individual responsibility for income security is creating a permanent emotional stress from which the affected groups can hardly escape.<sup>9</sup> A reformation or restructuring of the social contract theory in line with the changing market scenario and accepted state of government is required so that the legal rights of various groups and communities in a society are safeguarded.

## **5. THE REFORMED WAY OF CONTRACTING: INTEGRATIVE SOCIAL CONTRACT THEORY**

In a commercial regime with rising markets and expanding scope of private sector markets in public affairs thereby reducing the responsibilities of the government and growth of neo-liberal governmentality, there is a need to apply a new breed of social contract theory. It is a new way of looking at business ethics as the deregulated public affairs eventually attract capitalism. In the recent times, various farm laws that were introduced in Indian agricultural system in 2020 invited private sector intervention and overpowering of existing State institutions such as Agricultural Marketing Produce Committee, Minimum Support Price etc. ultimately creating ruckus amongst the farmer community and debate around various turning points. Integrated Social Contract Theory can help in deciding the moral validity of debated laws in a polarized state.<sup>10</sup>

The basis of integrative social contract theory is to analyze business decision making by the way of certain *authentic norms* that are said to be ethical standards permeated in a community.<sup>11</sup> Studies have indicated certain important norms which are vital parameters of business. Donaldson & Dunfee have elaborated on certain other norms which are fundamental to a social contract and are categorized as *hypernorms*. These are primarily certain policies which are efficient enough to contribute towards the necessities in such a manner so as to sustain and benefit the least well-off members of the society. Usually these actions make possible liberty, health, food, housing, education and just treatment. These include procedural rights of entering a contract or exiting it, structural rights to use and transfer property and right to fair and just treatment, substantive principles of promise keeping and respect for human dignity.<sup>12</sup> The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and the Farmers (Empowerment and Protection)

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<sup>9</sup> Sigrid Betzelt and Ingo Bode (2017) German Angst in a liberalized world of welfare capitalism: The hidden problem with post-conservative welfare policies. In: John Hudson, Catherine Needham and Elke Heins (eds) *Social Policy Review*. Bristol University Press, pp. 127-149.

<sup>10</sup> Baird and Mayer (2021) On Integrative Social Contracts Theory and Corporate Decision-Making in a Polarized Political Economy. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/basr.12223> (accessed: 16 November 2022).

<sup>11</sup> Anita Cava and Don Mayer (2007) Integrative Social Contract Theory and Urban Prosperity Initiatives. *Journal of Business Ethics* Vol. 72(3): 263-278.

<sup>12</sup> Anita Cava and Don Mayer (2007) Integrative Social Contract Theory and Urban Prosperity Initiatives. *Journal of Business Ethics* Vol. 72(3): 263-278.

Agreement of Price Assurance and Farm Services Act, 2020 reveals considerable interest of the corporations to invest in the farmer community. These can be regarded as prosperity initiatives by the government to lift the economic status of the poor and the middle class. But this raises eyebrow on the success of these businesses to answer not only amongst themselves but to the stakeholders at large. Therefore, the private sector cannot just think about self-interest but community at large has to be benefitted in the backdrop of the State policies and governmentality. If the approach is centered towards integration of corporations with social contract theory, it will lead to a legitimate backing of these institutions which makes them think beyond their own interest and more towards the welfare of the society.

## 6. CONCLUSION

The above discussion lets us to question the legitimacy and jurisprudential foundation of the recent farm laws in India whereby various corporate community engagement has been introduced and appreciated which ultimately sidelines the social welfare as a major duty of the State, projected in the Constitution of India. Corporations are created and influenced by political and economic system of combination of capitalism. It includes welfare capitalism and crony capitalism. On the other hand the Neo-classical theory places more emphasis on relevance rather than various social structures. This approach has to be changed. Self-interest has to be aligned with social interest as it is the duty of these corporations to think beyond their own vested interests and to use resources accordingly. A need to have a vision with broader interest while functioning is required and is expected from these institutions. The social contract theory when integrated with new nuances results in various new norms which are basically the prime aim of a society and governance. When problems of urban underclass, rural class are recognized by the government, academia, foundations and alike communities, the norms are also fashioned in the same way and initiatives follow.

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