

## CONSTITUTIONAL APPROACH TOWARDS AGRICULTURAL MARKETING LAW

Ms. Uroosa Naireen Shaikh  
Assistant Professor (Law), Marathwada Mitra Mandal's  
Shankarrao Chavan Law College, Pune

### Introduction

Agricultural Marketing Law means the law relating to matters in connection with trade and commerce in, or production, supply and distribution of, agricultural produce. It also includes sale or purchase of agro-raw materials or foodstuffs or processed finished products carried on, at a market place.

Century dictionary defines the term, 'Agricultural' as pertaining to, or connected or engaged with agriculture.<sup>1</sup> While, Black defines the term 'Marketing' as the act or process of promoting and/or selling products or services; or, the part of a business, concerned with meeting customers' needs; or, the area of study concerned with the promotion and selling of products or services.<sup>2</sup> It includes all activities in connection with the transport, grading, pooling, marketing and sale of industrial produce, whether in the primary form or in semi-processed or processed form.<sup>3</sup> Therefore, in simpler terms, *Agricultural Marketing Law* can be understood as the law dealing with legislations enacted by an Act of Parliament or Legislature of any State of India by virtue of Article 246 of Constitution of India and relevant rules and regulations made thereunder, concerning the market of agricultural commodities and/or produce. Innumerable legislative enactments by the Union & the States in India have time and again categorized and listed agricultural produce.<sup>4</sup> Produce as such can be understood as product(s) of natural growth, labor, or capital, especially agricultural products.<sup>5</sup>

The framers of our Indian Constitution have not used the term 'Agricultural Marketing Law' directly anywhere in the text of the law of the land. Nevertheless, the

marketing of agricultural produce has now become an industry. Certain aspects of this industry are regulated either by the Union or by the States as per the doctrine of distribution of legislative powers. Numerous entries can be found in Schedule VII of subject matters pertaining to agricultural marketing distributed in all three lists.

The Constitution of India, 1950 envisions India, that is, Bharat to be a Union of States<sup>6</sup> which means a Federation of States.<sup>7</sup> Exclusive powers of promulgation of statutory laws are conferred on the Parliament of India and on the Legislature of each State under Article 246 (1) and (3) respectively, to be exercised over a designated territory, thereby, hinting at its federal character. However, Schedule VII, thereto, carved out of Article 246 decentralizes this function of law-making, by listing out entries of various subject matters in three different headings, namely Union List<sup>8</sup>, Concurrent List<sup>9</sup>, and State List<sup>10</sup>. Federalism seeks to draw a balance between forces working in favor of concentration of power in the Centre and those urging a dispersal of it in a number of units.<sup>11</sup> Part XI of the Constitution of India encompasses legislative and administrative relations between the Union and the States. Our Indian Constitution has demarcated the legislative and administrative powers between the Centre and the States quite minutely by way of the three lists mentioned in Schedule VII. Our Constitution makers perceived this scenario of drawing a balance between Centre and States aimed to be filled with challenges, as well as, at the same time, with opportunities in the field of agricultural marketing.

Are all the stakeholders (including but not limited to agriculturists, middlemen like commission agents or licensed traders, producers or manufacturers, warehouse entrepreneurs, wholesalers that might include processors, exporters, bulk retailers, end-user, etc., retailers, consumers) in the agricultural marketing industry ready to move from chance-based agro-marketing system, that is, the *mandi* system to choice-based agro-marketing system, that is, liberalized alternative markets? Are the stakeholders ready to make an attempt gradually from subsistence to commercial use of agricultural produce, where there will be an emphasis on market-driven production rather than

production for subsistence, where price control will depend on market forces, or where privatization of agro-economy might lead to increase in overall GDP?

This chapter will aim to explain the constitutional basis of agricultural marketing law in the light of welfare state policies where the Union, may, for securing equitable distribution and availability at fair prices, regulate the supply, production, or distribution of, trade and commerce in, any declared essential commodity<sup>12</sup> in the public interest.

### Constitutional Perspective

The fabric of the Indian federal system stands on three pillars, namely, a strong Central Government (which includes legislative, financial, and emergency powers), a flexible federal system, and cooperative federalism.<sup>13</sup> Parliament of India has exclusive power to make laws with respect to any matter not enumerated in Concurrent or State Lists by way of residuary powers of legislation.<sup>14</sup> The phraseology of certain entries in List I and List III have in itself extended the scope of Union's power to legislate over subject matters including, but not limited to, industries, oil fields, mineral oil resources, other liquid and substances, mines and minerals inter-state rivers, river valleys, fishing and fisheries, salt, opium, higher educational professional institutions, etc.

Sarkaria Commission report<sup>15</sup> gives justification to the classification of entries in the three lists. It states as under:

1. Certain aspects of a subject matter being of local concern, have been placed in List II, but certain other aspects of the same subject being of national importance have been put in List I.

Ex: E. 13 & 32 List II r/w E. 44 List I

2. Some subjects of legislation in List II have been made expressly subject to certain entries in List III.

Ex: E.26 & 27 in List II are made subject to E. 33 List III

3. Certain entries in List II have been made subject to entries in List I.

Ex: E. 2 in List II is subject to E. 2A in List I;

E.33 List II is made subject to E. 60 List I.

4. Certain entries in List II have been made subject to laws made by parliament.

E. 37, List II is made subject to a law made by Parliament.

5. Certain matters in List II can become the subject of exclusive parliamentary legislation where Parliament makes a declaration of 'public interest' or 'national interest' by law. E.17 List II is subject to E. 56, List I,

E.23, List II is subject to E. 54, List I.

On a conjoint reading of the three lists of Schedule VII for the purposes of interpretation of agricultural marketing law, entries could be classified as follows:

1. Entries of List II that are subject to List I;
2. Entries of List II that are subject to List III;
3. Entries of List III that are subject to laws made by Parliament.

Entry 14<sup>16</sup> of List II empowers the State to make laws relating to agriculture. Thus, Union has limited power when it comes to agriculture and irrigation because regulation of land (Entry 18)<sup>17</sup> and water supplies (Entry 17)<sup>18</sup> except for inter-state rivers, lies with the States.

Another general entry in List II, of establishment & management of industries, that is to say, Entry 24<sup>19</sup> is subject to entries 7<sup>20</sup> and 52<sup>21</sup> of List I. Certain industries can be declared as controlled industries for the purposes of defense or prosecution of the war or in the public interest. The legal consequence of such framing of this entry has resulted in the promulgation of the Industries (Development & Regulation) Act, 1951<sup>22</sup> where certain industries that were earlier established and administered by the States were declared as controlled industries by the Union in the public interest. These controlled industries are listed in the First Schedule of Act of 1951. It includes industry engaged in manufacture or production of any of the articles mentioned in the first schedule, including but not limited to, industrial machinery of jute, tea, sugar; agricultural; inorganic, organic and

mixed fertilizers; sugar industry; food processing industries; vegetable oils and vanaspati, etc. among many other industries. It can then be inferred that the subject matter of industries lies primarily with the States; however, the Union may always declare any industry as controlled industry by amending the schedule of IDR Act, 1951 in public interest. On a similar footing, under entry 54<sup>23</sup> of List I, parliament is empowered to regulate mines and mineral development to the extent to which it declares it expedient in public interest to control the area; to the extent when there is no such declaration, the matter lies with the States under entry 23<sup>24</sup> of List II. Likewise, with regard to industries, the power is divided between the Centre and States, although the major responsibility in this area rests with the Union by virtue of entries 7 and 52.

Entries 26<sup>25</sup> and 27<sup>26</sup> of List II relate to trade and commerce within State and production, supply, and distribution of goods that includes both processed and agro-raw materials, respectively, both entries are subject to Entry 33<sup>27</sup> of List III. The term 'Industry' used in entry 24 of List II does not take within its scope what is contained in entries 26 and 27.<sup>28</sup>

Trade can be defined as:

1. The business of buying and selling or bartering of goods or services<sup>29</sup>; or,
2. Trade in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning, if it is a repeated activity in the nature of business carried out with a profit motive, the activity being manual or mercantile as distinguished from the liberal arts or learned professions of agriculture.<sup>30</sup>

The word 'commerce' is defined as the exchange of goods and services, especially on large-scale involving transportation between cities, states, and nations.<sup>31</sup> If a person buys goods with a view to selling them at profit, it is an ordinary case of 'trade'. If the transactions are on a large scale, it is then called 'commerce',<sup>32</sup> and if there is continuous repetition of such transactions it will constitute a 'business'.<sup>33</sup> Commerce essentially involves an exchange or buying and selling of commodities.<sup>34</sup>

We can thus infer that the terms, 'trade' and 'commerce' have very wide connotations. Still, the framers of our Constitution thought it necessary to draft a specific entry in List II<sup>35</sup>, of markets and fairs, separately, that denotes a designated marketplace within a state's territorial limits where the management or control of such a place would lie exclusively within the domain of the States. Imposition of the levy, if any, by the states to collect, or exact, as to levy money can be exercised as a consequence of entry 28 of List II, which, incidentally, does not find any similar mention anywhere else in the three lists.

Black<sup>36</sup> defines a market as a

1. A place of commercial activity in which goods or services are bought and sold <farmers market>
2. A geographic area or demographic segment considered as a place of demand for particular goods or services.
3. The opportunity for buying and selling goods or services; the extent of economic demand...
6. The price at which the buyer and seller of a security or commodity agree upon.

The term 'market' is commonly understood as a municipal market, private market, or public market. As a noun, market is used to denote a franchise or liberty derived from the municipality, or in some cases, it is held by prescription which presupposes a grant and may be granted to a public body or a private person, or it generally means a designated place in a town or city to which all persons who wish to buy or sell articles there exposed for sale.<sup>37</sup> As a verb, the word market is equivalent to sell.<sup>38</sup>

In view of this, it can be inferred that only the State has the power to legislate establishment or control or management of any market area within its own territorial limits either by way of regulation or prohibition. Consequently, the Government of India has time and again circulated to the States Model Acts relating to agriculture and allied purposes. To cite one such example, the Model Agricultural Produce Marketing

Committee Act of 2003 and Model Agricultural Produce and Livestock Marketing (Promotion and Facilitating) Act, 2017, among many others, were circulated to States so that they would then introduce the model framework in their respective jurisdictions by exercising their legislative power. The Model Acts contained provisions that aimed at increasing competitiveness in the agriculture supply chain, that provided farmers with freedom of trade, commerce, and intercourse within its territory for their produce through alternative marketing channels and to get fair remunerative prices (FRP), etc. Some States have exercised their power, but, on the whole, there is no uniformity all over India as States enjoy exclusive power to legislate on the subject matter of markets and fairs.

Thus, establishment or control or management of any market area by the Union would amount to encroachment in the domain of the State's legislative powers. The interpretation afforded to Art. 246(3) of the Constitution of India which starts with the text, 'subject to clauses (1) and (2) of Art. 246' can be resorted to in cases only when the conflict between legislative relations is irreconcilable. However, as a specific entry of markets and fairs in entry 28 would not fall under the general entry of trade and commerce in entry 26, applying the rule of harmonious interpretation, this conflict becomes very well reconcilable. The entry of 'markets and fairs' falls within the exclusive field allotted to the States. This principle of harmonious interpretation was applied by the Supreme Court in the case of *Calcutta Gas Company v. West Bengal*<sup>39</sup>. The power to regulate controlled or notified industries is not exclusively with the Parliament as evidenced by other entries like entry 26 of List II and Entry 33 of List III, apart from entry 8 or entry 24 of List II.<sup>40</sup>

Certain entries in List III are subject to the law made by the Parliament. The rationale underlying the Concurrent List is that there may be certain matters which are neither of exclusively national interest, nor of purely State or local concern. These matters are such that both Centre and the States may have a common interest therein. The relevant entry here is entry 33<sup>41</sup> which deals with both trade and commerce in, and the production,

supply and distribution of products of controlled industry declared by Parliament to be expedient in the public interest; of foodstuffs, of cattle fodder; of raw cotton; and of raw jute. The scope of entry 33 thus becomes very broad. Wheat, wheat products, paddy, sugar, and sugarcane fall under the term 'foodstuffs'.<sup>42</sup> The term foodstuffs do not mean only the final food product which is consumed but also includes raw food articles that may after processing be used as food by human beings.<sup>43</sup> Ex. Turmeric, cashew nuts. Seeds of food crops and seeds of fruits and vegetables relate to foodstuffs.<sup>44</sup> Entry 33 of List III supplements, to some extent, the Centre's power under entry 52, List I. Under clause a, even though control of certain industries may be taken over by the Union under Entry 52, List I, yet the trade, commerce, production, supply, distribution of such industry falls in the Concurrent area. This means that insofar as the field is not occupied by the laws made by the Union, the States are free to legislate.

There is a mutual relationship between entry 33 of List III and entry 14 of List II which pertains to agriculture. As production of foodstuffs falls under the present entry 33, a big chunk of the field of agriculture is taken over by the concurrent list, plus coupled with the rider that States can legislate only till such time the Centre exercises its own power, thereby concentrating on the shared legislative power of regulating the industry of agricultural marketing. The doctrine of occupied field as propounded by the courts of this country is relevant in this case. If a subject matter is within the exclusive competence of States, the Union legislature is prohibited from making any law in that field and vice versa. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective.<sup>45</sup>

Entry 34<sup>46</sup> of List III empowers both the Union and States to come with legislation that deals with price control of goods.

Parliament may on a declaration in the event of scarcity of goods or in public interest in any part of the territory of India discriminate between one State and another, on imposition of restrictions to trade and commerce<sup>47</sup> which otherwise ought to be free by virtue of Art. 301 of Constitution of India.

### Judicial Interpretation vis-à-vis Agricultural Marketing System

The entries are to be regarded as 'enumeration simplex of broad categories' and that the power to legislate on a topic of legislation carries with it the power to legislate on the ancillary matter which can be reasonably included in the power given.<sup>48</sup> The rule of widest construction of an entry, however, would not entitle the legislature to make a law relating to a matter which has no rational connection with the subject matter of the concerned entry.<sup>49</sup> Entries are to be interpreted broadly as these are not powers but fields of legislation. It is the judicial policy to give the widest amplitude to the language of these entries.<sup>50</sup> The first principle in relation to the legislative entries is that they should be liberally interpreted, that is, each general word should be held to extend to ancillary or subsidiary matters which can be fairly and reasonably be said to be comprehended in it. The second principle is that competing entries must be read harmoniously that is, to read the entries together and to interpret the language of one by that of the other.<sup>51</sup>

When an entry is in general terms in List II and part of that entry is in specific terms in List I, the entry in List I takes effect notwithstanding the entry in List II.<sup>52</sup> These subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power.<sup>53</sup> If there is an overlap or it may appear that entries are in direct conflict with each other then it is the duty of the Court to reconcile the entries and bring about a harmonious construction.<sup>54</sup> For example, If there is an overlap between List I and List II, List I will prevail by virtue of Art. 246 (1) non-obstante clause. If there is an overlap between List I and List III, List I will prevail by virtue of Art. 246(1) non-obstante clause and Art. 246 (2), where the exercise of the power of law-making of States under List III is subject to List I; thus, if there is an overlap between Union and Concurrent Lists, the power of the States is subject to the Union List. If there is an overlap between List III and List II, List III prevails by virtue of Art. 246 (2) non-obstante clause. Further Art. 246(3) authorizes the States to legislate regarding matters in the State List but subject to clauses (1) & (2) of Art. 246, which implies List II is subject to List I & III. The non-

obstante clause is the ultimate rule which is to be invoked only as a last resort, in case of inevitable and irreconcilable conflict between the entries in the lists. It is only when reconciliation between the conflicting entries should prove impossible then and only then the non-obstante clause in Art 246 is to be invoked to give primacy to Federal power over the State or Concurrent power.<sup>55</sup> Every attempt by the court should be made to reconcile the conflict. If only the conflict is irreconcilable, can then the Court apply the doctrine of pith and substance to find out the nature and content of the legislation dealing with the incidental encroachment and by invoking the non-obstante clause the central legislation will eventually prevail. A piece of legislation need not necessarily fall within the scope of one entry alone; more than one entry may overlap to cover the subject matter of a single piece of legislation.<sup>56</sup> The States are competent to legislate with respect to matters in this List III subject to the rule of repugnancy contained in Art. 254 (Inconsistency between laws made by Parliament and laws made by the legislature of States).

As India is a federation of States, India has a strong Union coupled with great economic potentiality because it may exercise all or any of the following powers in the field of agricultural marketing law, namely,

- Under entry 52 List I, it can control any industry;
- Under entry 33, List III, it can control the products of controlled industries, imported goods of the like nature, and important raw materials like cotton, jute, and foodstuffs;
- Under entry 42, List I, it can regulate interstate trade and commerce;
- Under entry 33A it can fix weight and measures that have an impact on trade and commerce;
- Under entry 34, List III, it can exercise price control that is closely related to entry 33 and many other important powers.

States too have some of the above legislative powers but are subject to Union's powers. However, harmonious interpretation by the courts has been afforded to specific

- <sup>30</sup> Punjab v. Bajaj Electricals Ltd. (1968) 70 ITR 730, 732 (SC).  
<sup>31</sup> Supra 2, at 263.  
<sup>32</sup> Gannon Dunkerley & Co. v. Madras (1954) 5 STC 216, 244 (Mad).  
<sup>33</sup> Supra 1, at 4728.  
<sup>34</sup> Ram Saroop v. Janki Dass Jaikumar, AIR 1976 Del, 219, 223.  
<sup>35</sup> Entry 28 - Markets and Fairs.  
<sup>36</sup> Supra 2, at 982.  
<sup>37</sup> Supra 1, at 2904, 2905.  
<sup>38</sup> Cantonments Act, Section 2 (xxi) (1924); Delhi Municipal Corporation Act, Section 2 (d) (1957); Goa Non-Biodegradable Garbage (Control) Act, Section 2 (26) (1996); Manipur (Hill areas) District Councils Act, Section 2 (h) (1971); New Delhi Municipal Council Act, Section 2 (23) (1994); Manipur Municipalities Act, Section 2 (32) (1994); Bengal Municipal Act, Section 2 (31) (1993); Bihar Agricultural Produce Markets Act, Section 2 (h) (1960); Calcutta Municipal Act, Section 451 (1951); TN District Municipalities Act, Section 260 (2) (c) (1920).  
Naverly Jute Mills v. Hayman & Mco AIR 1963 SC 90, 95; Om Prakash Saxena v. Dharendra Nath Nag AIR 1998 Cal 210, 212 para 12; & AIR 1960 Cal 170, 171.  
<sup>39</sup> Calcutta Gas Company v. West Bengal AIR 1962 SC 1044.  
<sup>40</sup> Uttar Pradesh v. Synthetics & Chemicals Limited AIR 1980 SC 614; Haryana v. Jage Ram AIR 1980 SC 2018.  
<sup>41</sup> Supra 28.  
<sup>42</sup> Nathuni v. West Bengal AIR 1964 Cal 279; AIR 1976 Ori. 138.  
<sup>43</sup> K Janardhan Pillai v. UOI AIR 1981 SC 1485, 1488.  
<sup>44</sup> Raghu Seeds & Farms v. UOI AIR 1994 SC 533.  
<sup>45</sup> Hindustan Lever v. Maharashtra AIR 2004 SC 326.  
<sup>46</sup> Entry 34 - Price control.  
<sup>47</sup> Constitution of India, Art. 302, 303.  
<sup>48</sup> Rajasthan v. Chawla AIR 1959 SC 544.  
<sup>49</sup> Union of India v. Shah Goverdhan L. Kabra Teachers College (2002) 7 SCALE 435.  
<sup>50</sup> Jilubhai Nanbhai Khachar v. State of Gujarat, AIR 1995 SC 142, 148.  
<sup>51</sup> Godfrey Phillips India Ltd. v. UP AIR 2005 SC 1103.  
<sup>52</sup> Prof Yashpal v. Chhattisgarh AIR 2005 SC 1646.  
<sup>53</sup> Federation of Hotel & Restaurant v. Union of India AIR 1990 SC 1637.  
<sup>54</sup> Godfrey Phillips India Ltd. v. U.P AIR 2005 SC 1103.  
<sup>55</sup> Waverly Jute Mills v. Rayman Company AIR 1963 SC 90; The Elel Hotels and Investment Limited v. Union of India AIR 1990 SC 1664 at 1668; Ajay Kumar Singh v. Bihar (1994) 4 SCC 401.  
<sup>56</sup> Ujagar Prints v. UOI AIR 1989 SC 516.

\*\*