BY HARKIRAT SINGH GHUMAN, ADVOCATE

FARM BILLS – FARCE OR A REMEDY

With the Punjab Legislative Assembly passing the three Farm Bills on 20th October 2020, a debate is doing the rounds, whether, these Bills will serve the intended purpose of protecting the interests of farmers of Punjab, or, will the Bills be superseded by the farm laws made by Parliament, earlier. Many people believe that in case, the President does not give assent to these Bills this matter could land up in the Supreme Court.

In order to get a clearer picture, it is important to first take an over-view of the provisions of the Constitution dealing with the distribution of powers between the Union and State Legislatures. Article 246 and the Seventh Schedule of the Constitution define the respective jurisdictions of the Union and the State Legislatures as regards subjects or topics of legislation. The Seventh Schedule enumerates the various items of legislation in three lists: List I – the Union List; List II – the State List; List III – the Concurrent List. As per Article 246, the Parliament has exclusive powers to legislate with respect to the matters enumerated in List I and the State Legislature has exclusive powers to legislate with respect to the matters enumerated in List II and both Parliament and State Legislatures may make laws in respect of the matters enumerated in List III. However, well defined the limits of powers of Union and State Legislatures may be, there may be cases where both may claim

competence to legislate on a particular subject. In such a situation, which law will prevail, the one made by Parliament or the one made by State Legislature? Such a scenario may arise either when the Parliament and State Legislature claim to have enacted a law on a subject contained in Concurrent List; or when the Parliament claims to have enacted a law on Union List and at the same time the State claims that it is competent to legislate on the same subject being a part of State List. In other words, when there is overlapping of powers of Centre and State Legislature. Article 254(1) of the Constitution deals with first of such scenarios and lays down that in case of conflict between a law enacted by the Parliament and legislature of a State on any subject contained in the concurrent list, the law made by Parliament shall prevail and the law made by State Legislature, to the extent of such repugnancy, shall be void. However, Article 254(2) lays down an exception to this general rule. It lays down that in case, a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The proviso to this clause lays down, that this clause shall not prevent the Parliament from enacting any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

The second scenario is when the Parliament claims that it is competent to enact a law, because the subject matter of law is a part of Union List and, at the same time the State Legislature claims that it is competent to legislate on the same subject because it is a part of State List. In such a situation, under Article 246 of the Constitution, the law made by Parliament, whether enacted before or after the law made by the State shall prevail over the State law. However, in case such a situation arises, the only feasible solution would be adjudication of the conflicting claims by the Supreme Court. Judging from the judicial precedent, so far, the approach of the Supreme Court has been to avoid conflicts and to interpret the entries in various lists, harmoniously, because it could not have been the intention of the framers of our Constitution that there should be conflict between Centre and State with respect to their respective powers of legislation.

The fact that shortly after passing the Bills, the Chief Minister accompanied by leaders of other parties, went to Raj Bhawan and handed over the Bills to the Governor with a request, to refer them to the President, points in the direction that State of Punjab is trying to make out a case that the farm bills have been enacted in exercise of powers of the State to legislate on subjects in Concurrent List and once the Bills have been assented by the President, they will prevail over the Acts enacted by the Parliament, qua the State of Punjab. However, this may be nothing more than wishful thinking, because, the procedure for passing Bills by the State Assembly gives wide discretionary powers to

the Governor. As per, Article 200 it is the discretion of the Governor to assent to the Bills or reserve them for the assent of the President. It is pertinent to mention that the Governor can also refuse to give assent to a Bill, i.e. he can veto a Bill. If he does so, it cannot become an Act. Further, Article 201 enunciates the options available to the President after a Bill has been sent to him for his consideration. The President may assent or withhold assent. Apart from this, as pointed out earlier, the Farm Bills will have to pass the acid test, as being valid legislations, enacted by State Legislature within its legislative powers.

Therefore, the passing of the Bills may eventually serve no useful purpose, except to provide lip-service to the farmers and show the Union Government united opposition to the new Farms Laws. While, the farmers may have to persevere with the unjust Farm Laws and wait with bated breaths, for restoration of status quo ante.

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Compiled by Harkirat Singh Ghuman, Advocate

The author is a practising advocate in Supreme Court of India and Punjab and Haryana High Court, Chandigarh

Contact: 9855506277

☎: 0172-4668326

✉ harkirat_ghuman@yahoo.com

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