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HOW THE FARMERS (EMPOWERMENT AND PROTECTION) AGREEMENT ON PRICE ASSURANCE AND FARM SERVICES ACT, 2020 TURNS ATTEMPTS AT CONCILIATION INTO COMPULSION

*Sydney Bennett**

I. INTRODUCTION

Following the passage of three contentious farming bills in September of 2020, Indian farmers and allies alike took to the streets to protest.¹ India's Parliament heard the voices of tens of thousands of dissenters,² many holding signs that read things like, "Farmers: We Feed the World"³ and "Don't Bite the Hand That Feeds You."⁴ Following the inception of these bills, which have been the impetus for more than 250 million workers to go on strike in India, there has been an increase of global concerns about India's treatment of the situation.⁵ Over 700 protestors have died,⁶ while many others have been beaten, arrested, and labeled as "terrorists."⁷ It is of grave concern and wonder why India's Parliament refuses to find a solution to the fatal situation it promoted when it passed the new farm laws.

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1. See Express Web Desk, *Farmers end year-long protest: A timeline of how it unfolded*, INDIAN EXPRESS, <https://indianexpress.com/article/india/one-year-of-farm-laws-timeline-7511961/> (Dec. 9, 2021, 4:06:49 PM).

2. Nitish Pahwa, *India Just Had the Biggest Protest in World History*, SLATE (Dec. 9, 2020, 4:13 PM), <https://slate.com/news-and-politics/2020/12/india-farmer-protests-modi.html>.

3. See Fighting for their rights (photograph), in Niharika Sharma, *Meals for cops and free period pads: India's farmers join a new era of inventive, inclusive protest*, QUARTZ INDIA, <https://qz.com/india/1944497/indias-farmers-join-a-new-era-of-inventive-inclusive-protest/> (July 20, 2022).

4. See Indranil Mukherjee, Photograph of a policeman standing in front of protesters during a nationwide strike called by farmers in Mumbai, India, in Leela Jacinto, *Indian farmers intensify protests, testing Modi's promised market miracle*, FRANCE 24 (Sept. 12, 2020), <https://www.france24.com/en/asia-pacific/20201209-indian-farmers-intensify-protests-testing-modi-s-promised-market-miracle>.

5. See Sandish Shoker, *Why UK protesters are supporting Indian farmers*, BBC (Dec. 12, 2020), <https://www.bbc.com/news/uk-england-leicestershire-55230734>.

6. Srishti Jaswal, *The human cost of India's yearlong farmers' protest*, AL JAZEERA (Nov. 20, 2021), <https://www.aljazeera.com/news/2021/11/30/human-cost-india-farmer-protest-agriculture>.

7. *Indian farmers in no mood to forgive despite Modi's U-turn on reforms*, CNBC (Nov. 20, 2021), <https://www.cnb.com/2021/11/20/indian-farmers-in-no-mood-to-forgive-despite-modis-u-turn-on-reforms.html>.

To understand this crisis, it is imperative to provide some background on India's farming community and the crucial role that agriculture plays. To put things in perspective, India has a population of approximately 1.38 billion people.⁸ Nearly 60% of the population are farmers, contributing roughly 18% of India's GDP.⁹ Yet, 85% of those farmers are marginalized and poor, living below the poverty line and unable to access the most basic necessities.¹⁰ An analysis provided by the *Hindustan Times* revealed that the average Indian farmer earned Rupees (Rs) 10,329 a month in 2018–2019, which is the equivalent to \$135 USD.¹¹ This amount does not lend much help when farmers are increasingly in debt.¹² In 2018, the average farmer's outstanding debt equaled Rs 74,121 (\$1,001 USD).¹³ Vikas Rawal, an economics professor specializing in agrarian distress at New Delhi's Jawaharlal Nehru University, claims that 90% of India's farmers cannot cover the basic costs of maintaining their farms, which includes the ability to purchase fertilizer, seeds, pesticides, and other equipment.¹⁴

To make matters worse, these statistics have led India to hold one of the highest rates of farmer suicides in the world, with more than 10,000 farmer suicides each year.¹⁵ Debt and bankruptcy are two major factors contributing to this staggering number.¹⁶ It is a well-known, disturbing fact that many of these suicides happen by way of drinking a pesticide called Sulfas.¹⁷ Farmers feel so hopeless that they are killing themselves with the very thing they cannot afford to acquire for the maintenance of their fields. Despite the critical role that farmers play in India's economy, they are nonetheless neglected and underappreciated. One might argue that any law or regulation which puts the average Indian farmer at any more of a disadvantage would be cruel and perilous to their livelihood. The new farm laws, which are the basis for the abovementioned protests, do just that. In its failed attempt to achieve long-awaited reform of India's agriculture infrastructure, India's government created more opportunities for farmers to be taken advantage of while simultaneously providing farmers with more uncertainty.¹⁸

8. Population of *India*, WORLD DATA BANK (2020), <https://data.worldbank.org/country/IN>.

9. See Sanykta Kanwal, *Agriculture in India - Statistics & facts*, STATISTA (Feb. 14, 2022), <https://www.statista.com/topics/4868/agricultural-sector-in-india/> (60% of the Indian population works in the agricultural industry).

10. See Kavya Datla, *Farm laws 2020: Who are they meant to serve?*, DOWN EARTH (Dec. 7, 2020), <https://www.downtoearth.org.in/blog/agriculture/farm-laws-2020-who-are-they-meant-to-serve--74540>.

11. Abhishek Jha, *Rs 6,000 is 6% of a small farmer's annual income*, HINDUSTAN TIMES, <https://www.hindustantimes.com/india-news/rs-6-000-is-6-of-a-small-farmer-s-annual-income-according-to-nso-data/story-rddMw0hk6cSbxjo7E1GyKK.html> (Feb. 6, 2019). Also see XE CURRENCY CONVERTER, <https://www.xe.com/currencyconverter/convert/?Amount=10329&From=INR&To=USD> (last visited Apr. 16, 2022) (the currency exchange rate at this time of this writing is 1 INR = 0.0130984 USD and all subsequent currency conversions in this article are done via this exchange rate).

12. See Harikishan Sharma, *Average debt of farm households up 57% in five years till 2018*, INDIAN EXPRESS, <https://indianexpress.com/article/india/average-debt-of-farm-households-up-57-in-five-years-till-2018-7501765/> (last updated Sept. 11, 2021, 7:32:32 AM).

13. *Id.*

14. Salimah Shivji, *Burdened by debt and unable to eke out a living, many farmers in India turn to suicide*, CBC NEWS (Mar. 30, 2021), <https://www.cbc.ca/news/world/india-farmers-suicide-1.5968086>.

15. Yasmina Hatem et al., *India has a farmer suicide epidemic*, BUS. INSIDER (Jan. 7, 2021), <https://www.businessinsider.com/india-farmers-protest-law-suicide-epidemic-2021-1>.

16. Shivji, *supra* note 14.

17. *Id.*

18. See Datla, *supra* note 10.

This paper will focus on the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act (the “Price Assurance Act” or the “Act”),¹⁹ which is one of the three new farm laws at the center of India’s protests. The Price Assurance Act is a new ordinance, as summarized below, which provides a guideline for farmers to sell outside of their designated markets and contract with buyers directly.²⁰ The Act is allegedly intended to encourage contract negotiations, protect farmers against corporate sponsors, and mitigate risks to all parties involved.²¹ While the intentions appear to be sincere, farmers are fearful for many reasons. For one, farmers worry about being exploited by corporate buyers with whom these new laws essentially force them to bargain with.²² There is also the possibility that farmers receive less for their crops because of the enhanced competition granted by these bills; more competition means more competitive prices, and when a farmer cannot compete, they will settle for less than they are entitled to.²³ To further their disadvantage, farmers have less access to legal resources, finances, and requisite knowledge and understanding to negotiate appropriately fair deals with corporate buyers.²⁴

Another source of concern is the dispute resolution mechanism that the Price Assurance Act requires parties to incorporate into their farming contracts.²⁵ This article will focus on this mandatory conciliation provision located in Sections 13 and 14 of the Act. Briefly, this provision requires the parties to the farming contract to settle any disputes that arise from their agreement with a conciliation board.²⁶ Consequently, the ability to litigate these disputes dissolves and any settlement reached via this conciliation process is binding on the parties to the agreement.²⁷ And although alternative dispute resolution (“ADR”) methods are typically seen as beneficial in many contexts around the globe, with many countries either encouraging the use of ADR or imposing it statutorily,²⁸ there is nevertheless cause for concern in this instance. This is because efficiency and effectiveness are not inherent in the implementation of ADR without the presence of other supporting factors. Rather, the most successful settlement processes require consensus between the parties involved in the dispute, and any statute enforcing the process should provide safeguards against any imbalances of power.²⁹ Neither of these factors are

¹⁹ The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, Bill No. 20 of 2020 (Sept. 27, 2020) (India) [hereinafter Price Assurance Act] (repealed by the Farm Laws Repeal Act, 2021).

²⁰ See Jyotika Sood, *Explained: Are New Farm Bills Anti-Farmer? All You Need to Know*, OUTLOOK, <https://www.outlookindia.com/website/story/india-news-the-farm-bills-and-quandary/360640> (Sept. 21, 2020, 1:37 PM).

²¹ See Sudha Narayanan, *The Three Farm Bills*, INDIA F. (Sept. 28, 2020), <https://www.the-indiaforum.in/article/three-farm-bills>.

²² See Datla, *supra* note 10.

²³ See Shivaansh Singh, *New Farms Act 2020*, INT’L J. ADVANCED LEGAL RES. (Dec. 9, 2020), <https://www.ijalr.in/2020/12/new-farms-act-2020.html>.

²⁴ See Datla, *supra* note 10.

²⁵ Vishwajith Sadananda, *In Farm Act, negotiating inequality*, INDIAN EXPRESS, <https://indianexpress.com/article/opinion/in-farm-act-negotiating-inequality-6964302/> (Nov. 6, 2020, 2:48:55 PM).

²⁶ *Id.*

²⁷ *Id.*

²⁸ See INT’L INST. UNIFICATION PRIV. L., FAO & INT’L FUND FOR AGRIC. DEV., LEGAL GUIDE ON CONTRACT FARMING 20 (2015), <https://www.unidroit.org/english/guides/2015contractfarming/cf-guide-2015-e.pdf>.

²⁹ See generally Ujwala Shinde, *Conciliation as an Effective Mode of Alternative Dispute Resolving System*, 4 J. HUMAN. & SOC. SCI. 1 (2012); Rick Voyles, *Managing an Imbalance of Power*,

accounted for in the Price Assurance Act.³⁰ Without protection against potential asymmetries in power between the farmer and a corporate buyer, and without mutual consent, attempts at valuable conciliation are displaced by compulsion.

Part II of this paper will outline the background and history of India's agricultural system, which is conducive to our understanding of India's farming system, and the effects of each of the three new farm laws on that system. Next, Part III will examine in greater depth the mandatory conciliation provision at issue in the Price Assurance Act to understand its impact on farmers and the agricultural system as a whole. Part IV will briefly discuss the benefits of ADR in agricultural contracts and explore ADR's various uses in the farming context. Lastly, Part V will argue that the mandatory conciliation provision in the Price Assurance Act replaces the collaborative settlement process sought in ADR procedures with a coerced arrangement between the marginalized farmer and an esurient corporate sponsor). Possible solutions and policy recommendations will be considered and analyzed following these discussions in Part VI.

II. BACKGROUND ON INDIA'S FARMING SYSTEM

In the 1960s, during a time coined as the "Green Revolution," India was a newly independent nation and could barely feed its citizens.³¹ The presence of long-lasting droughts only made matters worse.³² In an attempt to learn and advance its farming, India accepted aid from United States advisors to help modernize their methods and materials.³³ However, this led to mismanagement by the advisors and overuse of chemical fertilizers, pesticides, and irrigation, which effectively caused the land to become infertile.³⁴ Following these practices, many crops suffered and some indigenous crops almost disappeared completely; this decline in production is illustrated by the chart below:³⁵

MEDIATE.COM (Oct. 24, 2004), <https://www.mediate.com/articles/voylesR3.cfm>; Emily Holland, *Identifying a Power Imbalance*, ADR TIMES (Nov. 2, 2020), <https://www.adrtimes.com/identifying-a-power-imbalance-part-2-of-2/> (explaining the need for consent and detection of power imbalances for various ADR processes to be successful, not necessarily specific to farming contract disputes).

30. See Price Assurance Act, 2020, Bill No. 20 of 2020, §§ 13–14 (Sept. 27, 2020) (India); Sadananda, *supra* note 25.

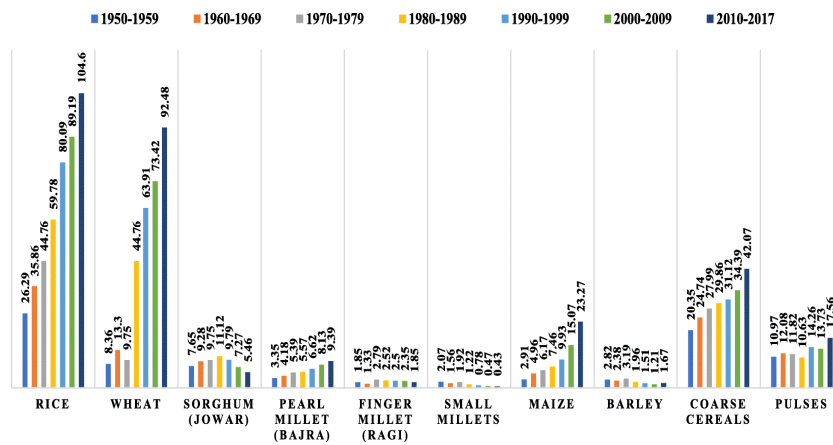
31. Vox, *India's huge farmer protests, explained*, YOUTUBE (Dec. 30, 2020), <https://www.youtube.com/watch?v=iHpZV7ro7IU>.

32. *Id.*

33. *Id.*

34. *Id.*

35. Ann Raeboline Lincy Eliazar Nelson et al., *The impact of the Green Revolution on indigenous crops of India*, 6 J. ETHNIC FOODS 1, 4 fig.2 (2019), <https://rdcu.be/cXpXj>. This chart demonstrates the trend of various crop productions from the 1950s to 2017, *id.* The period immediately after the initiation of the Green Revolution saw an increase in production of rice and wheat, which steadily increased through to 2017, *id.* However, production of other crops and millets (cereals, grains, small seed grasses), and sorghum, as depicted in the chart, decreased, or remained stationary, as the Green Revolution set forth an attitude of not focusing on the production of such crops, *id.*



Due to monoculture, which is the exclusive cultivation of a single crop in a given area, rice and wheat production nearly doubled.³⁶ As a result, India, which had recently faced a food shortage, now faced a food surplus (of rice and wheat).³⁷ Producing these particular crops was labor-intensive and yielded little profit due to their sudden excess.³⁸ In an attempt to incentivize farmers to continue producing these crops, India created the Minimum Support Price (“MSP”) in the late 1960s.³⁹ The MSP is a minimum price guarantee which serves to protect farmers from the uncertainty of crop yields and pricing; it essentially acts as insurance for farmers.⁴⁰ The central government conducts the necessary studies to determine these minimum prices and cooperates with the Commission for Agricultural Costs and Prices, which is then entrusted to determine the MSP.⁴¹ The government then announces the MSP for numerous crops at the beginning of each cropping season.⁴²

Also introduced in the 1960s in conjunction with the MSP was the Agricultural Produce Market Committee (“APMC”) Act.⁴³ Since agricultural marketing is a state-designated affair under India’s Constitution, the APMC operated under State governments rather than the central government.⁴⁴ With around 7,000 APMC markets throughout the country, the APMC system for each state varies, based on that state’s own regulations; some states have even repealed the APMC system and do not utilize it at all.⁴⁵ Nonetheless, the APMC had a number of goals and functions

36. *See id.*

37. Vox, *supra* note 31.

38. FE Knowledge Desk, *What is Minimum Support Price (MSP)?*, FIN. EXPRESS (Dec. 10, 2020, 10:27:40 AM), <https://www.financialexpress.com/what-is/what-is-msp-minimum-support-price/2146971/>.

39. *Id.*

40. *Explained: What is MSP and why farmers are protesting over it?*, INDIA TODAY (Sept. 29, 2020), <https://www.indiatoday.in/india/story/explained-what-is-msp-and-why-farmers-are-protesting-over-it-1726658-2020-09-29>.

41. *Id.*

42. FE Knowledge Desk, *supra* note 38.

43. *See* Shoumitro Chatterjee & Apraiti Mahajan, *Why are Indian Farmers Protesting the Liberalization of Indian Agriculture?*, 24(5) UNIV. CAL. GIANNI FOUND. AGRIC. ECON. MAY–JUNE 2021, at 2.

44. *See* Datla, *supra* note 10.

45. Chatterjee & Mahajan, *supra* note 43.

when it was first introduced. Farm producers were assigned to designated markets, popularly known as *mandis*, which established the boundaries of their transactions.⁴⁶ All sales in the *mandis* are then regulated by commission agents (“CA”), also known as *arhatiyas*, who mediate prices between producers and traders/buyers.⁴⁷ To auction off produce within the *mandis*, one must obtain a license.⁴⁸ This system was designed to develop an efficient agricultural marketing infrastructure by ensuring price transparency, providing market-led extension services to farmers, and guaranteeing that farmers are paid on the same day that their produce is sold.⁴⁹

While the system sounds fair on paper, it had many shortcomings for the farmers and the agriculture system. For example, when sold at these markets through the CA, produce often passed on to merchandisers in the city, who in turn sold the produce to small store owners and vendors at a much higher rate.⁵⁰ Produce sold by farmers averages Rupees (“Rs”) 2 or 3 per kg (this is approximately \$0.02 to \$0.04 per kg).⁵¹ Those middlemen then sold the same produce for Rs 20 to 30 per kg (approximately \$0.27 to \$0.40) to the urban customer.⁵² This distortion in the supply chain is a characteristic of cartelization.⁵³ Cartelization occurs when agents at the markets collude together to create an informal agreement as to the desired bidding prices of certain produce.⁵⁴ To make more profits off farmers’ crops, agents hoard produce that is limited in supply and in high demand, which causes a spike in the price for that produce.⁵⁵

This leads us to another defect in the system, which is the substantial overall significance placed on the Commission Agents’ role in the APMC system.⁵⁶ CAs played a major part in the entire APMC system; farmers obtained licenses to work with a CA, and the farmer then brought their produce to the CA, who unloaded it, cleaned it, and then facilitated the sale between the farmer and the buyer.⁵⁷ The CAs also provided equipment, machinery, and labor for filling and stitching grain bags.⁵⁸ However, farmers’ distrust of CAs arose when payments for produce were delayed.⁵⁹ A delay in payments would actually occur between three to fifty days after the purchase, despite the AMPC’s promise to the contrary.⁶⁰ Due to these delays,

46. Supriya Sharma, *Would a change in a 1960s law bring down food prices?*, SCROLL (July 9, 2014, 06:40 AM), <https://scroll.in/article/669679/would-a-change-in-a-1960s-law-bring-down-food-prices>.

47. *Id.*

48. *Id.*

49. See *Agricultural Produce Marketing Committee Act*, INDIA FILINGS, <https://www.indiafilings.com/learn/agricultural-produce-marketing-committee-act/> (last visited Apr. 17, 2022).

50. See Abhishek Sikdar, *The new farmers’ bill and its effects*, TIMES INDIA (Sept. 29, 2020, 2:47 PM), <https://timesofindia.indiatimes.com/blogs/economic-update/the-new-farmers-bill-and-its-effects/>.

51. *Id.*

52. *Id.*

53. *Agricultural Produce Market Committee (APMC)*, BYJU’S, <https://byjus.com/free-ias-prep/apmc/> (last visited Apr. 17, 2022).

54. *Id.*

55. See Sharma, *supra* note 46.

56. See Sthanu R. Nair & Reddy Sai Shiva Jayanth, *How farmers view the existing Mandi system*, NEW INDIAN EXPRESS (Dec. 12, 2020), <https://www.newindianexpress.com/opinions/2020/dec/12/how-farmers-view-the-existing-mandi-system-2235123.html>.

57. Sukhpal Singh & Tejinder K. Dhaliwal, *The Status of Commission Agent System in Punjab Agriculture*, 66 IND. J. AGRIC. ECON. 662, 662 (2011).

58. *Id.*

59. Nair & Jayanth, *supra* note 56.

60. Nair & Jayanth, *supra* note 56.

farmers would then rely on loans from the CA to survive.⁶¹ CAs already made 6–10% in commission from their sales of the farmer’s produce⁶²—despite having no actual role in the procurement of the crops—but a CA’s biggest source of income was the interest taken on credit from loans made to farmers.⁶³ The *Indian Journal of Agricultural Economics* provided the following insight:

Out of a total debt of Rs. 35,000 crores on Punjab farmers during 2008-09, it is estimated that Rs. 13,300 crores (38 per cent) is advanced by the non-institutional credit agencies in which commission agent is the major source of finance. The total interest paid by the farmers on this amount, even if we consider that the loan is effective for 2/3rd of the year, and the lower rate of interest charged at the rate of 24 per cent per annum, comes to *more than double* the amount earned as commission. (emphasis added).⁶⁴

This data, and its clear implications, illustrate the exploitation of farmers at the hands of CAs.⁶⁵ Farmers did all of the work in maintaining and harvesting their produce, only to bring their yields to an agent who made a commission by sitting in the market all day—a market that the farmer is prohibited from selling in to begin with.⁶⁶ When payment was finally granted to the farmer, their debts owed to the CA were deducted first, leaving little opportunity to make a profit.⁶⁷

These commissions to the CAs did not only affect the farmers’ income, but they also affected the total price paid by consumers.⁶⁸ By charging a commission, CAs merely increased the price they communicated to the consumers.⁶⁹ This feeling of distrust was further exacerbated by the fact that commission agents use their own language ‘*lande*’ (codified language) in maintaining their accounts.⁷⁰ Use of this complex, coded language—only known to CAs—left uneducated farmers, and literate people alike, unable to decode and follow the agents’ business.⁷¹

III. INDIA’S REFORM LEGISLATION

Due to these inequities, India’s central government decided to intervene in the APMC system ran by the states by introducing three new farm laws.⁷² However, there were still concerns about implementing such a drastic change.⁷³ For one, the farm laws represent an independent effort to open up the agricultural industry to private parties while getting rid of important political protections.⁷⁴ In addition,

61. See Nair & Jayanth, *supra* note 56; Singh & Dhaliwal, *supra* note 57, at 666.

62. Sharma, *supra* note 46.

63. See Singh & Dhaliwal, *supra* note 57, at 666.

64. See Singh & Dhaliwal, *supra* note 57, at 666.

65. See Nair & Jayanth, *supra* note 56.

66. See Sharma, *supra* note 46.

67. Nair & Jayanth, *supra* note 56.

68. Sharma, *supra* note 46.

69. Sharma, *supra* note 46.

70. Singh & Dhaliwal, *supra* note 57, at 664.

71. Singh & Dhaliwal, *supra* note 57, at 664.

72. See Madhur Bhatt, *Explainer: India’s Farm Laws Drive Wedge Between Farm Workers and Authorities*, JURIST (May 5, 2021), <https://www.jurist.org/features/2021/05/05/explainer-indias-farm-laws-drive-wedge-between-farm-workers-and-authorities/>.

73. See Katie Livingstone, *Why Did India’s Supreme Court Suspend Controversial Farm Laws Now?*, FOREIGN POL’Y (Jan. 13, 2021), <https://foreignpolicy.com/2021/01/13/india-supreme-court-suspend-farm-law-farmer-protest-modi/>.

74. *Id.*

despite the numerous flaws in the APMC system, it's the only system the farmers have known.⁷⁵ Critics of agricultural reforms urged that it would be better to revamp the system already in place, rather than approach the situation *de novo*.⁷⁶ Instead, each act set out to deregulate a part of the current agricultural system.⁷⁷ This section examines the three new agriculture laws that prompted the world's largest protest in history.⁷⁸

A. *The Three Farm Acts, Explained*

The first Act is the Farmers Produce Trade and Commerce (Promotion and Facilitation) Act ("Trade and Commerce Act"). This ordinance creates a free and unregulated trade space for farmers to sell their crops outside of the traditional farming markets.⁷⁹ In other words, the Act is meant to lay the groundwork for farmers to sell their produce anywhere—interstate, intrastate, online—and allows buyers to now deal directly with the farmers (rather than with a CA).⁸⁰ The Act also prohibits states from imposing taxes and market fees on farmers when they are outside of the APMC sector.⁸¹

The second law involves an amendment to the Essential Commodities Act of 1955. Before the present amendment, the six-decades-old law prohibited hoarding and bootlegging of essential commodities by private actors and traders.⁸² While there is no definition of "essential commodities," the list of commodities prior to the amendment consisted of "drugs, fertilizers (organic, inorganic or mixed), food-stuffs including edible oils . . . seeds of food-crops, fruits, vegetables . . .," and after the COVID-19 outbreak, face masks and sanitizers were added to this list.⁸³ Thus, before the Indian government altered the Essential Commodities Act, private actors and traders were barred from stockpiling any item that fell under this list—such as produce obtained from farmers. Following the amendment in 2020, not only did the government remove various items, such as cereals, potatoes, and edible oil seeds from the list of essential commodities, it also announced that it would only impose stock holding limits of essential commodities under exceptional circumstances, such as in times of war or famine.⁸⁴ It should be noted, this amendment does nothing to create new freedoms for farmers because farmers already had the liberty to store their yields; this autonomy over their yields allows them to make conscious

75. Bhavani Shankar, *Why Indian Farmers are so Angry About the Modi Government's Agricultural Reforms*, CONVERSATION (Feb. 1, 2021), <https://theconversation.com/why-indian-farmers-are-so-angry-about-the-modi-governments-agricultural-reforms-154428>.

76. Datla, *supra* note 10.

77. Datla, *supra* note 10.

78. Pahwa, *supra* note 2.

79. Singh, *supra* note 23.

80. Singh, *supra* note 23.

81. Sood, *supra* note 20.

82. *Explained: Why Essential Commodities Act amendment a double-edged sword*, WEEK, <https://www.theweek.in/news/biz-tech/2020/09/23/explained-why-essential-commodities-act-amendment-a-double-edged-sword.html> (last updated Sept. 23, 2020).

83. *Id.*

84. *Id.*; Singh, *supra* note 23. By removing an item from the list of essential commodities, the government expressly acknowledges that it will no longer regulate the item (except in exceptional circumstances) by removing the cap on stock limits, effectively giving more liberty to the private sector and processors. Singh, *supra* note 23.

decisions on when to sell, based on the market value of a particular crop.⁸⁵ On the contrary, the amendment now extends this freedom to private actors and traders, permitting them to store as much food-crops as they wish, and gives them control to manipulate the market value of crops.⁸⁶

The last Act, and the main focus of this paper, is the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act (“Price Assurance Act”). This law creates a structure for contract farming between a farmer and a buyer, which mandates that their contract includes the price of produce as well as the method for price determination.⁸⁷ The law also prescribes a three-tier non-judicial mechanism for resolving any disputes that arise from the contract.⁸⁸ First, the parties to the contract must include provisions in their agreement concerning the settlement of any disputes, by way of a neutral conciliation board.⁸⁹ If the dispute is not resolved in this manner within 30 days, the parties must then approach the jurisdictional Sub-divisional Magistrate (“SDM”) to hear the dispute.⁹⁰ If the parties remain dissatisfied with the outcome of their dispute, they may then approach the Appellate Authority.⁹¹ Both the SDM and the Appellate Authority must determine the dispute within 30 days of receipt of the dispute application.⁹² In sum, this Act paves the way for farmers to engage in contract farming while also eliminating any opportunity to judicially settle disputes that arise from said contracts.

So, with the shortcomings of the APMC clearly known and acknowledged, and the ostensible goals of the new laws laid out, why are farmers so against the three farming bills, which would effectively replace the APMC system on a national level? There is no doubt that India’s agricultural industry was in need of reformation.⁹³ Collectively, the three Acts aspire to provide more freedom to farmers by allowing them to sell outside of their APMC districts and create a free and unregulated market where they can interact directly with their buyers.⁹⁴ The Acts further aim to invalidate the present trade and distribution monopolies.⁹⁵ However, these attempts at reform have raised a lot of apprehension amongst farmers, citizens, lawyers, and international observers.⁹⁶

B. Criticisms of the Three Farm Acts

The primary concerns include the rate at which the bills were passed, the timing of their passage (during a pandemic), and the lack of collaboration between farmers and their governing body.⁹⁷ Due to the long-term effects of the new laws, farmers

85. Sood, *supra* note 20.

86. Sood, *supra* note 20.

87. Bhatt, *supra* note 72.

88. Bhatt, *supra* note 72.

89. Bhatt, *supra* note 72.

90. Bhatt, *supra* note 72.

91. Bhatt, *supra* note 72.

92. Price Assurance Act, 2020, Bill No. 20 of 2020 (Sept. 27, 2020) (India).

93. See Bhatt, *supra* note 72.

94. See Datla, *supra* note 10.

95. See Datla, *supra* note 10.

96. See Bhatt, *supra* note 72.

97. See *Bharat bandh: India farmers strike to press for repeal of laws*, BBC (Sept. 27, 2021), <https://www.bbc.com/news/world-asia-india-54233080>; Lauren Frayer, *India’s Farmer Protests: Why Are They So Angry?*, NPR (Mar. 2, 2021), <https://www.npr.org/sections/goatsandsoda/2021/03/02/971293844/indias-farmer-protests-why-are-they-so-angry>.

strongly feel that they, along with farming groups or agricultural unions, should have been consulted before the laws were passed.⁹⁸ From the farmers' point of view, without their input, and without recognition of their vocal opposition, the laws represent a unilateral attempt to take over and restructure the agricultural system.⁹⁹ Further, the COVID-19 pandemic has only added more stress on farmers and their business.¹⁰⁰ Completely reforming the system during a time of international crisis, and exposing farmers to unprecedented vagaries of a new system, has only exacerbated these worries amongst the farming community.¹⁰¹

Another debate relates to the constitutionality of the Acts altogether. The Indian constitution divides power between the central government and the states in three ways: List I – items reserved for the central government; List II – items reserved for the States; and List III – items reserved for cooperative federalism between the two.¹⁰² Agricultural marketing is found on List II, as a state-controlled issue.¹⁰³ However, the central government argues that the new bills fall under List III as trade and commerce (normal markets), an issue that the central government has power to regulate.¹⁰⁴ In contrast, many argue that farming is not a trade and should not fall under List III, and therefore, the new laws are an unconstitutional assertion of power on the part of the central government.¹⁰⁵ This debate about whether the central government had the authority to enact the laws in the first place has led many states to refuse to acknowledge the laws in their territory.¹⁰⁶ For example, the state of Rajasthan responded to the laws by designating all potential market areas as “state-controlled” areas, eliminating the Acts' ability to govern.¹⁰⁷ This display of resistance by state governments has heightened suspicions about whether more states will commit to undermining the Acts by enforcing their own policies, which would only negate the intent of the central government to create an open and free market.¹⁰⁸

This wouldn't be the first time that individual states acted independently when it comes to establishing their own agricultural marketing system—a system contrary to what the central government promotes. Which leads to the next area of concern: What are the consequences of eliminating the APMC? In 2006, Bihar was the first state in India to abolish the APMC system when it introduced a system for procurement through a designated government institution.¹⁰⁹ The government hoped, and expected, the revamped system to drive up private investments within the

98. Livingstone, *supra* note 73.

99. Livingstone, *supra* note 73.

100. Frayer, *supra* note 97.

101. Frayer, *supra* note 97.

102. Mohammad Amaan Siddiqui, *Discussing the Aggravating Crisis of the Indian Agricultural Sector with Emphasis on the New Indian Agricultural Bills (2020)*, RSCH. GATE 5 (2020), https://www.researchgate.net/publication/344772889_Discussing_the_Aggravating_Crisis_of_the_Indian_Agricultural_Sector_with_Emphasis_on_the_New_Indian_Agricultural_Bills_2020.

103. *Id.*

104. *Id.*

105. *Id.*

106. See Datla, *supra* note 10.

107. Datla, *supra* note 10.

108. See Datla, *supra* note 10. See generally Singh, *supra* note 23.

109. Rohit Kumar Singh, *Bihar records growth in farm yield post-APMC act but farmers unhappy*, INDIA TODAY, (Dec. 10, 2020), <https://www.indiatoday.in/india/story/bihar-records-growth-in-farm-yield-post-apmc-act-but-farmers-unhappy-1748437-2020-12-10>; Midhat Fatimah, *Nitish Kumar's Govt Scrapped APMC Act 14 Years Ago But Farmers In Bihar Still Languishing*, OUTLOOK, <https://www.outlookindia.com/website/story/india-news-nitish-kumars-govt-scrapped-apmc-act-14-years-ago-but-farmers-in-bihar-still-languishing/378104> (Mar. 24, 2021 5:19 PM).

agricultural sector.¹¹⁰ However, the consequence of getting rid of the APMC system in Bihar was neither a drop in food prices for consumers, nor prosperity for farmers.¹¹¹ The state government sought to eliminate the middleman approach used in the APMC markets by creating Primary Agricultural Credit Societies (“PACS”)—agencies designated to procure paddy from farmers—that would then purchase farmers’ produce at a rate fixed by the PACS to benefit the farmers.¹¹² However, delays in payment from those transactions forced farmers to resort to selling their produce in the open market at “throwaway prices” to avoid loss.¹¹³ So, while agricultural productivity did increase greatly, farmers remained unhappy as middlemen continued to make huge profits by buying produce directly from farmers at prices well below the MSP.¹¹⁴

The issue remains that, even with the abolition of the APMC in Bihar, and even though the state government proclaimed that they would rid the system of so-called “middlemen,” it failed to create a new system in which the farmers could rely on the government to support such changes and guarantee acceptable prices.¹¹⁵ Ajay Jakhar of the non-partisan farmers advocacy organization, Bharat Krishak Samaj, asserts that, “Bihar’s example shows that you cannot do away with the *mandis* without creating an alternative system in their place.”¹¹⁶

On the other hand, creating a new system, while maintaining the old, presents its own complications. This is the main criticism of the Trade and Commerce Act—rather than formally eliminate APMC markets, the Act merely creates a competing system for farmers to engage in.¹¹⁷ While this enhances the government’s desire to promote free markets, with the APMC markets still at play (at least for the time being), they will continue to create the benchmark for the rest of India’s agri-business.¹¹⁸ The effects of maintaining two parallel markets with completely different rules are that farmers in the APMCs will soon be forced to leave and operate in the new market with unregulated corporations if they wish to have a chance at survival. The tension between these markets leaves farmers with less power to decide where they sell their produce and at what price.

Prior to amending the Essential Commodities Act, actors, such as CAs, could not (legally) hoard crops that were on the “essential commodities” list.¹¹⁹ However, the illegality of hoarding did not prevent CAs from still committing the act.¹²⁰ Back in 2012, the Competition Commission of India discovered that traders in onion markets in Maharashtra and Karnataka were storing onions after purchasing from farmers—instead of immediately selling the produce—with intentions of acquiring higher prices.¹²¹ Following the enactment of this amendment to the Essential Commodities Act, the government has practically promoted hoarding, and essentially

110. Fatimah, *supra* note 109.

111. Sharma, *supra* note 46.

112. Singh, *supra* note 109.

113. Singh, *supra* note 109.

114. Singh, *supra* note 109.

115. *See* Singh, *supra* note 109.

116. Sharma, *supra* note 46.

117. *See* Sharma, *supra* note 46.

118. *See generally* Kirpen Dhaliwal, *Corporatization of agriculture - A critical analysis of the farmer bills, 2020*, 2 LEXFORI LEGAL J. 22, 29–30 (2020).

119. Sood, *supra* note 20.

120. *See* Sharma, *supra* note 46.

121. Sharma, *supra* note 46 (citing P.G. Chengappa et al., *Competitive Assessment of Onion Markets in India*, COMPETITION COMM’N INDIA, 52 (2012)).

gave up its power to regulate price inflation.¹²² And while farmers have always had this ability to store their own produce, small-time farmers typically lack access to storage facilities.¹²³ This leads farmers to sell produce soon after harvest for low prices.¹²⁴ As a result, anybody with enough money will be able to stock up on crops, without limitations, and virtually dictate the prices of crops.

As for the Price Assurance Act, its enactment comes with very little oversight. For one, contracts between the farmers and their buyers may be verbal, leaving the farmer susceptible to abuse if and when disputes arise.¹²⁵ In addition, the Act does not stipulate that the contract prices of the farmers' crops should be at least the equivalent of the MSP.¹²⁶ Without confirmation that their sales will be protected and supported by the longstanding MSP system, why would farmers want to blindly enter contracts with powerful corporations?

An example of these concerns is present in the PepsiCo contract farming that has occurred in Punjab for the past three decades.¹²⁷ The beverage manufacturer, PepsiCo, first set up a fruit and vegetable processing plant in Hoshiarpur in 1989–90 where it planned to buy tomatoes and green chilies from farmers to make ketchup for its subsidiary, Pizza Hut.¹²⁸ Contract farming with PepsiCo worked initially, as it raised farmers' incomes and gave jobs to locals at the processing plant.¹²⁹ Some of this success can be associated with the mutual trust the farmers and PepsiCo had because they depended on one another.¹³⁰ In the Indian government's view, contract farming means that farmers cultivate their own land, the company tells the farmer what to grow and at what price it will buy the crop, and the company provides the farmer with seeds, fertilizers, and any other necessary equipment.¹³¹ Further, if the crop is lost, the company bears the burden, and if there is a dispute, it must be adjudicated by the local Sub-Divisional Magistrate.¹³² However, the reality is much different according to many Punjab farmers.¹³³

Farmers claim that many contracts between Punjab farmers and PepsiCo are verbal.¹³⁴ And when PepsiCo needs a particular crop variety grown, they provide the seeds for a price to the farmers.¹³⁵ Then, if the crop does not pass the quality check, PepsiCo might very well refuse to buy it.¹³⁶ Those farmers who praise PepsiCo, and the overall contract farming system, are the big-time farmers who have a lot of land, capable of serving the corporations.¹³⁷ For this reason, contract farming is often harmful to small-time farmers.¹³⁸ Farmers who are only familiar with crop

122. Sood, *supra* note 20.

123. Dhaliwal, *supra* note 118, at 30.

124. Dhaliwal, *supra* note 118, at 30.

125. Datla, *supra* note 10.

126. Sood, *supra* note 20.

127. Basant Kumar, *Lessons from Punjab: Will contract farming benefit or harm Indian farmers?*, NEWSLAUNDRY (Oct. 14, 2020), <https://www.newslaundry.com/2020/10/14/lessons-from-punjab-will-contract-farming-benefit-or-harm-indian-farmers>.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. Kumar, *supra* note 127.

133. *See* Kumar, *supra* note 127.

134. Kumar, *supra* note 127.

135. Kumar, *supra* note 127.

136. Kumar, *supra* note 127.

137. Kumar, *supra* note 127.

138. Kumar, *supra* note 127.

cultivation will fall behind in this system because big corporations want to buy produce in bulk and of consistent quality—measurements and quality that small farmers cannot obtain, especially without knowledge of the business aspect of agriculture.¹³⁹

The PepsiCo situation lends an explanation for one of the biggest points of contention in the Price Assurance Act—the mandate for a dispute resolution mechanism in farming contracts, which will force farmers and their opposing corporate parties to conciliate in the event of a dispute.¹⁴⁰ With this, the corporations know that farmers have little room, or knowledge, to negotiate prices and terms, and farmers fear that they will only become “slaves” to the corporations.¹⁴¹ In sum: The passage of these laws endanger the APMC system farmers have grown accustomed to. This will force farmers to enter into a new, unfamiliar and unregulated market of contract farming with corporate buyers if they wish to survive. However, without the promise of the MSP to guarantee that farmers get paid fairly for their produce, disputes will inevitably arise. When this happens, farmers will not have the ability to bring these disputes to court due to the mandatory conciliation provision now required by law to be in their farm agreements. If anything, the mandatory conciliation provision—the government’s proposed mechanism meant to protect farmers during a dispute arising in this new market—will likely hurt the farmers.

IV. EXPLORING ALTERNATIVE DISPUTE RESOLUTION IN AGRICULTURAL CONTRACTS

ADR processes tend to be widely accepted in agricultural contracts. The practice of turning to an alternative dispute resolution process in place of litigation stems greatly from the value placed on the farmer’s relationship with their buyer.¹⁴² In addition, issues related to quality compliance require specialized and efficient measures, which the courts may not be able to provide.¹⁴³ It appears that India’s enactment of the Price Assurance Act set out to act on these objectives.¹⁴⁴ But as this section demonstrates, the Act failed to account for different variables that hinder the accomplishment of said objectives.

Agricultural contracts can be defined as an agreement between a producer (farmer) and a buyer for the production of cultivation in which the farmer promises to harvest a certain product of a certain quality for a commitment from the buyer to purchase it.¹⁴⁵ Agricultural contracts are unique in that there are a multitude of

139. Kumar, *supra* note 127.

140. See Sadananda, *supra* note 25.

141. Datla, *supra* note 10.

142. Clara Maria Lopez Rodriguez, *Enforcing Contracts and Resolving Disputes in Contract Farming: How ADR Can Address the Specificities of Agricultural Production Contracts*, 20 UNIF. L. REV. 180, 188 (2015).

143. *Id.*

144. See Price Assurance Act, 2020, Bill No. 20 of 2020 (Sept. 27, 2020) (India). The Price Assurance Act attempts to aid in the process of building a beneficial contractual relationship between a farmer and a buyer by providing instructions on contract formation and providing guidance on what items should be included in said contract, *id.* Some such items include the term of the contract, quality standards, pre-determination of price, and farming practices, *id.* Thus, by creating the Price Assurance Act, which includes an ADR provision, the Indian government sought to advise the parties as they implement their farming contract and form a relationship, as well as ensure that parties had a means for handling any disputes that arise from their contract, with the goal of preserving this relationship, *id.*

145. Rodriguez, *supra* note 142, at 181.

external influences that may affect either party's ability to fulfill their obligation as set forth in the contract.¹⁴⁶ These "external influences" may be any number of natural events such as droughts or floods, or changes in governmental policies may impose additional obstacles for the parties.¹⁴⁷ Therefore, given the contractual nature of this relationship, and the outside and often uncontrollable forces that may affect the parties' ability to perform, it has become an internationally acceptable practice to include a dispute resolution provision in agricultural contracts to protect parties against potential liability.¹⁴⁸

In disputes arising from a farming contract, ADR may take many different forms. There are the common, well-known methods of mediation, arbitration, negotiation, and conciliation.¹⁴⁹ But the field has seen an evolution towards procedures catered more towards farming disagreements. For example, dispute settlement boards established by local or national commissions or agricultural panels have authority to make judgments on a particular incident.¹⁵⁰ Similarly, in some countries, a village leader or trusted non-governmental organization may adjudicate an issue.¹⁵¹ Another method that has gained recognition is the use of third-party assessment of the crops in question to verify the quality of a product.¹⁵² But no matter what form is implemented, the intended benefits are the same: promotion of communication between the parties; an informal and flexible process; typically, cost-effective; less time-consuming; private and confidential; and preservation of on-going relationships between the parties.¹⁵³ However, these benefits will vary depending on the type of dispute at issue, the kind of ADR employed, and various other components of a given situation, such as mutual consent between the parties.¹⁵⁴ Without consent and safeguards against an imbalance of power, the weaker party to a dispute resolution process will inevitably be disadvantaged, subsequently disposing of many of the previously-mentioned benefits to using ADR in the first place.

Given that farming contracts see similar disputes again and again, many countries have found value in statutorily enforcing ADR in agricultural contracts, with a number of laws either promoting or requiring the parties to resort to a resolution process before attempting to litigate.¹⁵⁵ The more common disputes to arise are related to quality standards and the pricing of produce.¹⁵⁶ However, parties may also disagree as to the production methods used, how the produce is to be delivered, or

146. Rodriguez, *supra* note 142, at 182.

147. Rodriguez, *supra* note 142, at 182.

148. Rodriguez, *supra* note 142, at 182.

149. See Rodriguez, *supra* note 142, at 182.

150. Sara Gustafson, *Contracts and Conflicts: Resolving Disputes to Improve Contract Farming*, FOOD SEC. PORTAL (Sept. 17, 2015), <https://ssa.foodsecurityportal.org/blog/contracts-and-conflicts-resolving-disputes-improve-contract-farming>.

151. *Id.*

152. *Id.*

153. See Rodriguez, *supra* note 142, at 188.

154. See SCOTT BROWN ET AL., ALTERNATIVE DISPUTE RESOLUTION PRACTITIONERS GUIDE 3 (1998). Conflict Management Group, creator of this ADR guide, is an international non-profit organization that focuses on training, consulting, and researching alternative dispute resolution processes, *id.* CMG prepared this guide following a decade of research and experience in creating new ADR systems around the world for various types of conflicts, *id.*

155. See *Legal Guide on Contract Farming*, *supra* note 28, at 214 (this citation refers specifically to arbitration but is nonetheless true for ADR's broader scheme and other processes).

156. See *Legal Guide on Contract Farming*, *supra* note 28, at 204.

the application of the previously agreed upon pricing structure.¹⁵⁷ In different countries around the world, settling these disputes in a court room is unfeasible and inefficient due to the high costs associated with litigation, the routine delay in finding a resolution, and the producers' lack of resources.¹⁵⁸ Therefore, attention towards dispute resolution mechanisms continues to grow in agricultural disagreements.¹⁵⁹

Despite the goals and known successes of using ADR in farm contracts, there is room for assessment in its efficacy. Too often, throughout the ADR process, the chosen ADR instrument begins to convert into a private judicial system in that the process and expenditures resemble those procedures and costs present in litigation.¹⁶⁰ Frequently, there are lingering concerns about the parties' respective bargaining powers and access to necessary resources.¹⁶¹ There is also raised apprehension regarding ADR provisions in farming contracts when those provisions make ADR *mandatory*.¹⁶² This unease stems from the fact that farmers may not know what they are agreeing to when they sign their contract.¹⁶³ Farmers may not find out that their contract included a mandatory ADR provision until a disagreement arises, leaving them surprised and unsure how to proceed. When both parties do not consent to such a process, the foundation of a successful resolution is fractured from the start. This is why some countries throughout the world have even gone to lengths to either ban the use of *mandatory* ADR in contracts, or to at least provide specific guidelines for ADR procedures, such as what elements should be required in an ADR provision or what processes parties may use for selecting a third-party neutral.¹⁶⁴ In the case of India and its Price Assurance Act, the government chose to statutorily mandate conciliation by requiring that the parties explicitly provide for a conciliation process in the event of a dispute regarding the parties' contract.¹⁶⁵

V. WHEN DOES CONCILIATION TURN INTO COMPULSION?

Conciliation, as mandated by the Price Assurance Act, is an example of how conciliation efforts can convert into a coercive endeavor on behalf of the party with the upper hand.¹⁶⁶ The Act's three-tier dispute resolution mechanism requires close

157. See *Legal Guide on Contract Farming*, *supra* note 28, at 204.

158. Gustafson, *supra* note 150.

159. See *Alternative Dispute Resolution: An Overview*, NAT'L AGRIC. L. CTR., <https://nationalaglawcenter.org/overview/adr/> (last visited Apr. 22, 2022).

160. Rachel Thomas, *Reasons Why Alternative Dispute Resolution Is Still Secondary To Litigation*, VIA MEDIATION ARB. CTR., <https://viamediationcentre.org/readnews/MTQ2/Reasons-why-Alternative-Dispute-Resolution-is-still-Secondary-to-LitigationIndia> (last visited Apr. 24, 2022) (“[ADR] has now become concerned with procedure much like litigation . . . The system which was meant to be an alternative to litigation has begun to mirror the exact qualities of the very judicial route that it aimed to deviate from by bearing more importance to motions, briefs, discovery, depositions, judges, lawyers, expert witnesses, publicity and damage awards beyond contractual limits and beyond reason.”).

161. Sadananda, *supra* note 25.

162. BROWN ET AL., *supra* note 154, at 37–38.

163. See Sadananda, *supra* note 25 (the Act contemplates a scenario where the parties have not established a conciliation board when drafting their contract. There is potential for abuse when the farmer does not know the extent of the terms of his contract or the repercussions for omitting the mandated conciliation provision).

164. BROWN ET AL., *supra* note 154, at 37–38 (“Arguably, the best model is one that gives disputants access to an ADR process at any point in the life of a dispute, without mandating that they use ADR.”).

165. Price Assurance Act, 2020, Bill No. 20 of 2020, §13 (Sept. 27, 2020) (India).

166. The remainder of this paper discusses a farmer's contractual adversary in the context of that of a corporation; however, this is not to assume that corporations are the only entities contracting with

review: Tier I – Any dispute between the farmer and his buyer must be resolved with mandatory conciliation, which is handled by a conciliation board, as set forth in the parties’ agreement.¹⁶⁷ The Board, as chosen by the parties, should be fair and balanced in representing both parties to the agreement.¹⁶⁸ In the event that the parties have not chosen a board, the Sub-Divisional Magistrate (“SDM”) is authorized to appoint one.¹⁶⁹ When a dispute arises, the Board must hear it first.¹⁷⁰ Tier II – If the dispute remains unresolved by the Board within thirty days, the parties may then approach the SDM for a resolution.¹⁷¹ The SDM has 30 days from receipt of an application from the parties to decide an outcome.¹⁷² Tier III – The law also provides for an appeals process under the authority of the Collector of the concerned district for review of any order granted by the SDM, which also must be decided within 30 days from receipt of an application by the parties.¹⁷³ Otherwise, a settlement reached by the board is binding on the parties.¹⁷⁴ Thus, in light of this mandate, farmers are prohibited from taking their disputes to court.¹⁷⁵

A. *Background, How the Price Assurance Act’s Conciliation Provision Operates*

Some alleged goals of the conciliation provision include: quick resolution of disputes, less caseloads on the courts, and an equal playing field between the farmer and his counterpart, as the provision instigates more participation between the parties and less use of lawyers and judges.¹⁷⁶ Because the board is set up and implemented for the sole purpose of finding a solution to the parties’ dispute, efficiency and expediency increases.¹⁷⁷ However, various issues that the mandatory conciliation provision cannot account for arise at each phase of the farmer/buyer

farmers following the passage of the 2020 farm laws. It is when a farmer contracts with an entity or individual with more power, resources, legal understanding, etc. that the fears elaborated on throughout this paper are relevant. Often times, this situation presents itself when such contracts include corporate parties.

167. Price Assurance Act, 2020, Bill No. 20 of 2020, §13 (Sept. 27, 2020) (India). When parties create and enter into a farming contract, they must include provisions that set forth the conciliation process to be taken in the event of a dispute, *id.* Also required to be included in their contract are instructions on how a conciliation board will be formed. *But see Farmers’ Agreement on Price Assurance and Farm Services (Dispute Resolution) Rules, 2020*, India Filings, <https://www.indiafilings.com/learn/farmers-agreement-on-price-assurance-and-farm-services-dispute-resolution-rules-2020/> (last visited Aug. 20, 2022) (the board is to consist of representatives of both parties; however, the Act provides no further guidance on the formation of their conciliation board).

168. Price Assurance Act, 2020, Bill No. 20 of 2020, §13 (Sept. 27, 2020) (India).

169. Swati Rao, *Resolving disputes under the farm laws*, SPONTANEOUS ORD. (Jan. 11, 2021), <https://spontaneousorder.in/resolving-disputes-under-the-farm-laws/>.

170. Price Assurance Act, 2020, Bill No. 20 of 2020, §13 (Sept. 27, 2020) (India).

171. Price Assurance Act, 2020, Bill No. 20 of 2020, §14 (Sept. 27, 2020) (India).

172. Price Assurance Act, 2020, Bill No. 20 of 2020, §14 (Sept. 27, 2020) (India).

173. Price Assurance Act, 2020, Bill No. 20 of 2020 (Sept. 27, 2020) (India). *See also* Reshmitha Sarma, *Who is a collector?*, L. TIMES J. (Jan. 19, 2020), <https://lawtimesjournal.in/who-is-a-collector-what-are-his-powers/>. A Collector, also known as the District Magistrate, is the highest Indian Civil Administrative Officer, and they act as the principal representative of the administration in a given district, *id.* A Collector, also known as the District Magistrate, is the highest Indian Civil Administrative Officer, and they act as the principal representative of the administration in a given district, *id.*

174. Sadananda, *supra* note 25.

175. Chatterjee & Mahajan, *supra* note 43, at 2.

176. Rao, *supra* note 169.

177. Rao, *supra* note 169.

relationship. Those phases can be categorized as: (1) creation of the parties' agreement; (2) execution of their agreement (whereby disputes may arise); and (3) the finality of the parties' contractual relationship (aftermath of a settlement if a dispute did arise).

At the contract creation phase, farmers and companies alike feel that their contract, and any subsequent concerns surrounding it, are linked to mutual trust (or lack thereof); something that a law cannot account for.¹⁷⁸ Farmers have seen this scenario play out many times before—for example, the PepsiCo situation mentioned above. If the corporate buyer doesn't show up for the crop, how will the farmer get ahold of the company?¹⁷⁹ If the crop is lost, who is to be held accountable?¹⁸⁰ And without a mandate for the use of the MSP in their contracts, farmers fear that they will have to accept lower prices just to survive and forego mention of any concerns had by the corporation.¹⁸¹ Corporate buyers are equally apprehensive in that they believe they can't complain about the farmers for fear the public would turn against them.¹⁸²

A party's right claimed under a statute is different than a party's claim asserted under a contract.¹⁸³ Because of this distinction, the terms of the contract govern the relationship between the parties. The Price Assurance Act has failed to ensure that those terms are fair.¹⁸⁴ Simply commanding the parties to include a conciliation provision in their contract, without first addressing important concerns surrounding the formation of the farming agreement, acts as a mere stopgap to the overarching narrative.

The next phase of the farmer-buyer relationship that has potential for trouble is during the actual execution of the parties' contract. This is the phase where a dispute is most likely to arise. Upon a dispute arising, the parties have no additional option other than to conciliate; this means that the parties must take their feud to a conciliation board, whether they agreed to it or not.¹⁸⁵ Mandating a dispute resolution mechanism in this manner assumes the best, most cost-effective approach to settling a particular dispute between two particular parties is to first pursue a negotiated settlement.¹⁸⁶ This assumption neglects to acknowledge that each dispute, and each party to the dispute, is unique, and that automatically requiring and applying an ADR mechanism may not be setting the parties up for success.¹⁸⁷

Private agreements usually concern complex questions of fact, which are typically evaluated by the civil courts.¹⁸⁸ In contrast, the Price Assurance Act places all of this control for determination in the executive branch which is now the enforcer, adjudicator, and interpreter of the law.¹⁸⁹ Paragraph 8 of Section 14 of the Price Assurance Act states, “[t]he Sub-Divisional Authority . . . shall, while deciding

178. Kumar, *supra* note 127.

179. Kumar, *supra* note 127.

180. Kumar, *supra* note 127.

181. See Kumar, *supra* note 127.

182. Kumar, *supra* note 127.

183. Mahalakshmi Pavani, *Farm Laws: Farming towards an Executive Overreach of the Judiciary*, LEAFLET (Dec. 13, 2020), <https://theleaflet.in/farm-laws-farming-towards-an-executive-overreach-of-the-judiciary/>.

184. *Id.*

185. Sadananda, *supra* note 25.

186. Sadananda, *supra* note 25.

187. See BROWN ET AL., *supra* note 154, at 3.

188. Pavani, *supra* note 183.

189. *Id.*

disputes under this section, have all the powers of a civil court for the purposes of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed by the Central Government.”¹⁹⁰ This is a problem because many SDMs, those *executive* officers granted with the power to help parties settle these disputes, are only trained for administrative tasks, and do not undergo any kind of legal training.¹⁹¹ This places the aggrieved party in an difficult position in which there is no certainty as to the level of expertise and legal understanding of the only person in the process meant to be impartial.¹⁹²

A major concern of this process is that, due to their appointment and regulation by the government via the Price Assurance Act, the conciliators might decide disputes in favor of those corporations and government-related individuals.¹⁹³ One basis for this fear is the Indian government’s repeated attempts to attract big corporate entities into the country in hopes of improving the economy.¹⁹⁴ Thus far, corporations have been unable to exceed 10% of India’s grocery market.¹⁹⁵ The remainder of the market still rests in the hands of small-scale markets, family-owned shops, and door-to-door sellers.¹⁹⁶ Given the high costs of operating big grocery stores, and the costs associated with transportation, informal grocery transactions have remained the norm.¹⁹⁷ Consequently, it can be argued that the lack of corporate success is due, in part, to a lack of demand.¹⁹⁸ For this reason, the Indian government has continued to seek ways to appeal to corporations. For example, in 2019, the government announced its biggest corporate tax reduction in 28 years.¹⁹⁹ Nevertheless, critics of the new farm laws believe that the laws are just another tactic for the government to push their main agenda—economic growth through increased internal and foreign investment.²⁰⁰ If this is true, farmers have legitimate fears that appointed conciliators would be partial to corporations.

Whether corporate entities and other private actors previously deemed it worthwhile to participate in India’s agricultural sector, there is no doubt the idea has become more appealing with the passage of the farm acts. This is mostly due to the laws’ absence of the minimum support price guarantee.²⁰¹ Without codification of the MSP, farmers have no legal right to any economic protections over their produce, thus making it easier for corporations to invest in agriculture for the cheapest price possible.²⁰² Indian farmers have seen this happen before, dating back to when the British still ruled India.²⁰³ During this time, the British exploited Indian farmers

190. Price Assurance Act, 2020, Bill No. 20 of 2020, §14(8) (Sept. 27, 2020) (India).

191. Ridhi Gupta, *Dispute Resolution Mechanism In The Farm Acts: An Open Sesame or a Pandora’s Box?*, RGNUL STUDENT RES. REV. (Jan. 25, 2021), <https://rsrr.in/2021/01/25/dispute-resolution-farm-laws/>.

192. *Id.*

193. *Id.*

194. See Siddiqui, *supra* note 102, at 8.

195. See Siddiqui, *supra* note 102, at 8.

196. See Siddiqui, *supra* note 102, at 8.

197. See Siddiqui, *supra* note 102, at 8.

198. See Siddiqui, *supra* note 102, at 8.

199. See Siddiqui, *supra* note 102, at 8.

200. See Siddiqui, *supra* note 102, at 10.

201. Adeeti Singh, *Do the three 2020 farm laws meet the constitutionality test?*, CJP (Dec. 8, 2020), <https://cjp.org.in/do-the-three-2020-farm-laws-meet-the-constitutionality-test/>.

202. *Id.*

203. *Id.*

by persuading them to grow indigo instead of food crops.²⁰⁴ The farmers barely made any profits from producing indigo, which resulted in great debt.²⁰⁵ This era of indigo plantation occurred through contract farming.²⁰⁶ For these reasons, critics of the farm laws argue that any fairness guaranteed by the acts are a mere illusion.²⁰⁷

Further, the Act contemplates a scenario where the parties have not agreed on a conciliation process in their contract.²⁰⁸ In this event, the Act sets forth that the jurisdictional SDM shall establish the parties' conciliation board.²⁰⁹ Yet, the Act is silent as to how the SDM should compose the board:

(1) Where, the farming agreement does not provide for conciliation process as required under sub-section (1) of section 13, . . . any such party may approach the concerned Sub-Divisional Magistrate who shall be the Sub-Divisional Authority for deciding the disputes under farming agreements. (2) On receipt of a dispute under sub-section (1), the Sub-Divisional Authority may, if – (a) the farming agreement did not provide for conciliation process, constitute a conciliation board for bringing about settlement of such dispute.²¹⁰

This is the extent of the guidance provided to the SDM in setting up a conciliation board. In contrast, the Farmers' Produce Trade and Commerce Act ("FPTC") (one of the other two farm laws passed with the Price Assurance Act) explicitly sets forth the procedure for an SDM to follow when in this position. In the event that the parties did not include steps for establishing a conciliation board, and once the parties have submitted an application to the concerned SDM, the SDM shall:

(1) . . . within fourteen days from the date of receipt of the application, appoint a conciliation board which shall be chaired by an officer serving under the supervision and control of that authority. . . . (2) The Sub-Divisional Authority shall, considering the nature, gravity and monetary value involved in the dispute, simultaneously appoint members as recommended by the disputing parties, to the conciliation board, in equal numbers such that total number of appointed members to represent such parties shall be either two or four: Provided that, if a party fails to recommend members

204. *Id.* See Catherine Gilon, Indigo: The story of India's 'blue gold', AL JAZEERA (Dec. 13, 2020), <https://www.aljazeera.com/features/2020/12/13/indigo-and-the-story-of-indias-blue-gold>. By the mid-19th century, English trade company there East India Company had developed indigo plantations all around eastern India, *id.* Indigo was a highly profitable crop as there was a high demand for the blue dye in Europe for use in textiles, *id.* To cultivate the indigo, the Company utilized a type of landlord-tenant system with farmers, *id.*

205. Gilon, *supra* note 205 ("[T]hese farmers were provided loans with such extremely high interest rates that it would pass on to the next generations, forcing descendants to become bonded indigo labourers. The selling price disparity was also so high that the farmers were only given 2.5 percent of what the indigo would fetch on a global market . . .").

206. Singh, *supra* note 202.

207. Gupta, *supra* note 191.

208. Sadananda, *supra* note 25.

209. Sadananda, *supra* note 25.

210. Price Assurance Act, 2020, Bill No. 20 of 2020, §14(1) (Sept. 27, 2020) (India).

within seven days, the Sub-Divisional Authority may appoint such members as it thinks fit, to represent such parties.²¹¹

These two laws clearly differ in the quantity of details and guidance provided to the SDM in the event they must organize a conciliation board for the parties. Thus, there is confusion as to whether one should look to the language in the FPTC dispute resolution provisions as guidance for how the SDM should act in compliance with the Price Assurance Act. Or should we take the language of the Price Assurance Act to mean that the SDM, himself, will act as the sole decision maker, responsible for conciliating the parties' dispute? Or rather, considering that the Price Assurance Act intended the parties to proactively create their own conciliation board within their contract—or at least establish a process for creating the board—can we assume they get that same opportunity after a dispute arises, despite failing to be so proactive as required by the Act?

The best guess might be to imitate the procedure set out in the FPTC.²¹² Nevertheless, this ambiguity is significant, as it effects the formation of the very entity expected to decide the parties' dispute. For example, if parties are uninformed about the appointment method used by the SDM, it is very possible that they could miss the 7-day deadline for selecting members for their conciliation board as established in the FPTC (assuming the provisions of the FPTC would control the process). In that event, the SDM is granted extreme discretion in appointing members of the board.²¹³ By conferring so much authority to the SDM, parties are robbed of the opportunity to present their contractual dispute to a decision-maker with appropriate legal knowledge.²¹⁴

Finally, at the last phase of this relationship, and after “resolution” of any subsequent dispute, is the appeal process. Under the Price Assurance Act, if the parties have exhausted their negotiations, and the SDM has issued a resolution, the parties may appeal the SDM's decision to the Appellate Authority (presided by the Collector) within 30 days of the SDM's order.²¹⁵ The Appellate Authority then has 30 days to issue its decision on the appeal.²¹⁶

The only prospect for judicial involvement is by way of writs under Articles 226 and 32 of the Indian Constitution.²¹⁷ In *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*, (1986) 2 SCR 278, the Supreme Court held that the courts will not enforce unfair and unreasonable contracts, or any unfair and unreasonable provisions within a contract when the contract was entered into

211. Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, Bill No. 21 of 2021, §§ 6(1)–(2) (Sept. 27, 2020) (India).

212. Gupta, *supra* note 191. Under the Farmers' Produce Trade and Commerce Act, any dispute that arises between the farmer and trade must be submitted to the SDM, who shall be responsible for establishing a conciliation board to arrive at mutually agreeable solution to the dispute, Gupta, *supra* note 191. (“The Conciliation Board shall consist of a Chairperson appointed by the SDM and either 2 or 4 persons, half each of which shall represent the parties in dispute. Such other members shall be appointed by the Chairperson on the recommendation of the parties, and in case the parties fail to make recommendations in 7 days, the appointment shall be done directly by the SDM.”).

213. Trisha Shreyashi, *Enabling Alternate Resolution For Our Very Own Countrymen: ADR under Farm Laws, 2020*, CONTEMP. L.F. (Apr. 11, 2021), <https://tclf.in/2021/04/11/enabling-alternate-resolution-for-our-very-own-countrymen-adr-under-farm-laws-2020/>.

214. Gupta, *supra* note 191.

215. Price Assurance Act, 2020, Bill No. 20 of 2020 (Sept. 27, 2020) (India).

216. *Id.*

217. Gupta, *supra* note 191.

between parties who are not equal in bargaining power.²¹⁸ This is only when the courts are called upon to review such contract terms, though.²¹⁹ There is doubt surrounding whether one has the ability to appeal an adverse settlement under the conciliation process to the Supreme Court or High Courts.²²⁰

Article 32 of India's constitution provides citizens with the guarantee of protection of their *fundamental* rights, whereas Article 226 expands to enforcing other legal rights as well.²²¹ What this means is that, without a violation of a party's fundamental rights, review of the SDM or Appellate Authority's decision would not be granted under Article 32.²²² In contrast, the High Court has discretion in deciding whether to issue a writ, depending on the facts and circumstances of a case.²²³ However, this possibility does not look promising either, for a few reasons. First, the High Court, in its exercise of writ jurisdiction, cannot decide an appeal involving a disputed contract between parties.²²⁴ This is because there is no fundamental or legal right to observe. Second, the Court has held that Article 226 is not intended to circumvent statutory procedures.²²⁵ "It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations . . . that recourse may be had to Article 226 of the Constitution."²²⁶ Accordingly, the notion that one has a path to the high courts is a mere façade.

Nevertheless, even if appealing to the high courts were permitted, there is no doubt that a majority of farmers would be incapable of reaching that point due to their financial constraints.²²⁷ In reality, it is more likely than not that the farmer will have less resources and legal understanding to go beyond the three-tiered dispute resolution system.²²⁸ Thus, the Act overlooks a plethora of historical evidence in Indian agri-economics that demonstrate how farmers are ill-equipped to negotiate fair prices and terms when it comes to selling their produce.²²⁹ Given this fact, how can one also believe that farmers may suddenly hold the necessary understanding of fair negotiation and legal processes when it comes to settling disputes and appealing any results that arise from unfair prices and terms?²³⁰

This uncertainty in the mandated resolution process, coupled with the potential for fickle contract relationships, paints a picture much different than what India's

218. *Cent. Inland Water Transp. Corp. Ltd. v. Brojo Nath Ganguly*, (1986) 2 SCR 278, 369–70 (India).

219. *See id.*

220. *See Pavani*, *supra* note 183.

221. *Write A Note On Article 32 And 226. What Is The Difference Between Article 32 And 226 Of Indian Constitution?*, L. CORNER (Dec. 5, 2020), <https://lawcorner.in/write-a-note-on-article-32-and-226-what-is-the-difference-between-article-32-and-226-of-indian-constitution/>. Further, Article 32 relates to the power of the Supreme Court to issue writs, while Article 226 directs the High Courts (a step below the Supreme Court) on when it can issue writs, *id.*

222. *See Pavani*, *supra* note 183.

223. *Write A Note On Article 32 And 226. What Is The Difference Between Article 32 And 226 Of Indian Constitution?*, *supra* note 221.

224. *Pavani*, *supra* note 183.

225. *Write A Note On Article 32 And 226. What Is The Difference Between Article 32 And 226 Of Indian Constitution?*, *supra* note 221 (citing *Assistant Collector v. Dunlop India Ltd.*, (1985) 2 SCR 190, 192).

226. *Assistant Collector v. Dunlop India Ltd.*, 2 SCR 190, 192 (India).

227. *Gupta*, *supra* note 191.

228. *Sadananda*, *supra* note 25.

229. Arjun Harkauli, *Why the new farm laws will not level the playing field*, DOWN TO EARTH (Oct. 27, 2020), <https://www.downtoearth.org.in/blog/agriculture/why-the-new-farm-laws-will-not-level-the-playing-field-73959>.

230. *See id.*

government likely envisaged when enacting the legislation. Where the government pictured a free, open market for farmers to prosper and interact with big time buyers, it lacked the foresight to implement protections against the potential harms that farmers inherently face by way of their position in the current agricultural system. And in the context of potential disputes arising in this new market, the government acted impetuously by emphasizing the goals of conciliation without first considering the surrounding factors that make or break the conciliation process.

So, while ADR can be utilized to increase access to disadvantaged groups with its potential for efficient and cost-effective resolutions, the Price Assurance Act does not account for those real concerns had by farmers, those concerns that affect every stage of the process and a farmers' relationships with buyers. Throughout this discussion of the inner workings of the conciliation provision within the Act, two key principles repeatedly presented themselves as necessary for ensuring the success of the process: *mutual consent* and *symmetry of power*. With a lack of consent and an imbalance of power, pursuits of quick, non-judicial resolutions between the parties can quickly evolve into an act of intimidation against farmers.

B. *There Must Be Consensus*

The success of conciliation depends on many things, but one key aspect is the mental attitude of the parties, and their mutual consent in resolving their dispute through conciliation.²³¹ When parties are legally obligated to engage in conciliation in the event of a dispute, it can hardly be said that mutual consent for the process exists.²³² This concept of consent is relevant at various stages. First, mutual consent is beneficial in deciding whether the parties use a dispute resolution method at all or whether they should litigate a dispute.²³³ Next, for the process to be truly voluntary, the parties should be granted the right to choose the process for their dispute resolution, including who will hear the conflict and aid in the process.²³⁴ Lastly, the parties should find consensus in the settlement agreement induced by the conciliator.²³⁵

While there are many reasons for ADR's lack of success in India, a major contributor is the lack of faith and understanding in the process by those who have been forced to use it.²³⁶ Researchers in India conducted in-depth interviews with litigants at the Ahmedabad District and Sessions Court, which revealed that a majority of them were uninformed on any ADR process.²³⁷ And even after having the process explained to them, many found themselves remaining suspicious and hesitant to proceed.²³⁸ Many parties enter ADR with a "win-or-lose" mindset, leaving them

231. Shinde, *supra* note 29, at 7.

232. BROWN ET AL., *supra* note 154, at 4.

233. See Vishnu Konoorayar et al., *Alternative Dispute Resolution in India – ADR: status/effectiveness study*, INDIAN L. INST. 67 (2014), <https://www.ssoar.info/ssoar/handle/document/41034>.

234. Deepika Kinhal et al., *ODR: The Future of Dispute Resolution in India*, VIDHI CENT. LEGAL POL'Y 16 (2020), <https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/>.

235. Konoorayar et al., *supra* note 233, at 67.

236. Eshwar Agarwal et al., *We need alternative dispute resolution mechanisms in India*, WEEK (July 9, 2020), <https://www.theweek.in/news/india/2020/07/09/opinion--we-need-alternative-dispute-resolution-mechanisms-in-in.html>.

237. *Id.*

238. *Id.*

insistent that the only satisfactory outcome is a decision that lands in their favor.²³⁹ Thus, approaching the conciliation process as a mere formality, enforced upon disgruntled parties—rather than understanding it as an opportunity—has eliminated the desired effects of using ADR. Due to this misplaced comprehension of ADR, the exploration for alternative approaches and means of spreading information about ADR continues.

In 2013, Italy introduced a pilot provision within its law on mediation for civil and commercial disputes; this provision—the so-called Italian Mediation Model—provided for three paths of mediation.²⁴⁰ One of those paths—recourse by voluntary agreement—requires an initial mediation session before parties can take their case to court.²⁴¹ After one session of mediation, if a party decides not to proceed with the process, they may opt-out and file their case with the court.²⁴² In 2017, a study of caseload and mediation statistics in Italy, over a 4-year period, revealed the success of this method.²⁴³ Out of 180,000 mediations initiated through the first required mediation attempt, almost 50% of those sessions resulted in the parties voluntarily agreeing to continue with mediation efforts.²⁴⁴ For the first time in Europe, Italy had more mediations than cases in court.²⁴⁵ This success is, in part, due to the parties being exposed to the process and becoming informed about the advantages of proceeding, while retaining their right to opt out.²⁴⁶ Feeling like one has a choice in the handling and outcome of their case alleviates the daunting emotions that come with a mandated (and unfamiliar) procedure.

Without fully understanding the process of conciliation, and each parties' role in it, it seems counterproductive to expect parties to know how to best choose the guiding process and conciliation board for their dispute. Nonetheless, under the Price Assurance Act, parties are granted the option for choosing their conciliation board and establishing the manner in how they will conduct themselves if a dispute arises.²⁴⁷ However, without also providing parties with some kind of public list of accredited conciliators or institutions, along with details of their expertise, training, established fees, and locality, “consensus” is hardly met in terms of the parties agreeing on who will make up the conciliation board.²⁴⁸ Instead, the government granted power to the jurisdictional SDM in the event that a party did not choose their conciliator for the board.²⁴⁹ Further, without laying out the qualifications or criteria for selection of a conciliator by the SDM, the parties are placed in a weak position and left uncertain about the level of expertise of any subsequently chosen

239. *Id.*

240. Leonardo D'urso, *Italy's 'Required Initial Mediation Session': Bridging The Gap Between Mandatory and Voluntary Mediation*, 36 INT'L INST. CONFLICT PREVENTION RESOL. 56, 56–57 (2018).

241. *Id.* at 57.

242. *Id.*

243. *Id.* at 57–58.

244. *Id.* at 58.

245. D'urso, *supra* note 240, at 57–58 (the types of disputes that were involved in this opt-out method, and subsequent study included “joint real estate ownership; real estate generally; division of assets; inheritances; family business agreements; real property leases including rental apartments, business, and commercial; bailments; medical malpractice liability; damages from libel, and damages from insurance, banking and financial contracts”).

246. *See* D'urso, *supra* note 240, at 58.

247. Price Assurance Act, 2020, Bill No. 20 of 2020, §13 (Sept. 17, 2020) (India).

248. Kinhal et al., *supra* note 233, at 16.

249. Price Assurance Act, 2020, Bill No. 20 of 2020, §14 (Sept. 17, 2020) (India).

conciliators deciding their dispute.²⁵⁰ Consent is nonexistent when any choice in the process or make up of the conciliation board is effectively dismantled by a lack of resources and understanding.

In India, the role of the conciliator is to assist parties in a neutral manner, to find common ground in their dispute so as to aid in the parties reaching a mutual agreement.²⁵¹ In this purview, the conciliator (or in the case of the Price Assurance Act's mandated process, the conciliation board) intends to take in information about the dispute and induce the parties to come to an agreed upon settlement.²⁵² Yet, under the Act, if this mutual agreement cannot be met within 30 days, the SDM has authority to decide the outcome.²⁵³ This leaves open the possibility of parties recanting their consent and cooperation in the conciliation process when they are forced into an agreement. This is especially true for farmers who likely do not have the time nor resources to process any proposed agreements.

By requiring a tenuous yet binding dispute resolution process, without further protection or guidance, and without an adjudicator to question the enforceability of the terms, the Price Assurance Act virtually authorizes the enforcement of unfair farming agreements that farmers likely do not know they agreed to.²⁵⁴

C. *There Must be Protection Against an Imbalance of Power*

In addition to mutual consent, farmers must worry about an imbalance of power between themselves and their buyer. For example, the party with more power or wealth may pressure the weaker party into accepting an unfair result, causing the settlement to appear consensual, when in fact, the settlement is a result of coercion.²⁵⁵ Power is circumstantial and can take various forms; in this sense, it may be unfair and unrealistic to automatically assume that the farmer is the weaker party in every transaction.²⁵⁶ Nevertheless, based on the background of Indian farmers provided in the introduction, which stated that 85% of the Indian farmer population lives below the poverty line,²⁵⁷ it should be noted that safeguards against potential power asymmetries in the conciliation process are crucial for the Price Assurance Act to accomplish what it sets out to do—protect farmers and facilitate a free market.²⁵⁸ Power imbalances may take various forms: disparity in available information and resources, disproportionate wealth, and unequal bargaining power are a few examples that will be discussed.²⁵⁹

One instance of this imbalance of power is when one party does not have the necessary resources or wherewithal to evaluate the information in front of them,

250. Gupta, *supra* note 191.

251. See Justice M. Jagannadha Rao, *Concepts of Conciliation and Mediation and Their Differences*, L. COMM'N INDIA L. 2-4, https://lawcommissionofindia.nic.in/adr_conf/concepts%20med%20rao%201.pdf (last visited Apr. 23, 2022).

252. Konoorayar et al., *supra* note 233, at 67.

253. Price Assurance Act, 2020, Bill No. 20 of 2020, §14(1) (Sept. 17, 2020) (India).

254. Sadananda, *supra* note 25.

255. BROWN ET AL., *supra* note 154, at 22.

256. Sadananda, *supra* note 25.

257. Datla, *supra* note 10.

258. Sadananda, *supra* note 25.

259. Sadananda, *supra* note 25; Samir Bhatnagar, *Economics of Indian Farmers' Movement: A Study of Agrarian Distress and a Vicious Debt Cycle*, 16 YALE J. INT'L AFF. 38, 41-42 (2021), <https://www.yalejournal.org/publications/economics-of-indian-farmers-movement-a-study-of-agrarian-distress-and-a-vicious-debt-cycle>.

leaving them incapable of calculating the outcome of a dispute.²⁶⁰ This *informational* imbalance may manifest itself in the first phase of the relationship, where the parties create their contract. In this instance, “[t]he farmer is left to his own devices to negotiate aspects such as farm produce, produce price, quality, quantity, effects of pestilence, force majeure, food safety standards, labour to be employed. An average marginal farmer is ill-equipped to perform all these tasks.”²⁶¹ This informational imbalance is especially concerning when it distorts the weaker party’s perception of the dispute and possible outcomes, which, in turn, forces them to accept terms that might be against their interest.²⁶²

This is more likely to occur when the weaker party is navigating dispute resolution on their own, as opposed to obtaining a lawyer for guidance—an opportunity that corporate parties often retain. Corporate buyers are in a stronger position because of their greater understanding of contracts, their financial stability, their legal support system, and their access to the government.²⁶³ Because of these factors, corporate buyers may take advantage of the farmer’s unadvised position in the dispute.²⁶⁴

Farmers saw this take place only a few years ago, in 2019, when PepsiCo sued four farmers for cultivating the FC5 potato variety that is exclusive to PepsiCo’s Lay’s potato chips.²⁶⁵ PepsiCo told the farmers that they had to either sell the potatoes back to PepsiCo, or stop cultivating the potato variety; in return, PepsiCo would withdraw their lawsuit.²⁶⁶ Given that PepsiCo sought more than 10 million rupees (approximately \$130,700 USD) from each farmer for the alleged patent infringement, many supporters of the farmers noted the coercion by PepsiCo.²⁶⁷ “Other than coercing these farmers, PepsiCo is also intimidating and exploiting them. It is a clear case of a large [multi-national corporation] arm-twisting India’s poor farmers,” says Ashwani Mahajan, who heads the Swadeshi Jagran Manch, an economical and cultural organization in India.²⁶⁸ PepsiCo withdrew its lawsuit a few weeks later “after discussions with the government.”²⁶⁹ This illustrates how a farmer’s lack of knowledge regarding claims and possible dispute outcomes would force the farmer to do as the corporate buyer wants, to avoid the buyer carrying out its threats.

This imbalance can also reveal itself in terms of *wealth*. For example, the weaker party may need the amount in dispute so urgently that they are inclined to settle the dispute on terms controlled by the more powerful party just to expedite payment.²⁷⁰ This may be the result even in a case where the weaker party is aware that they are entitled to more money.²⁷¹ The possibility of getting a farmer to accept

260. Sadananda, *supra* note 25.

261. Harkauli, *supra* note 229.

262. Sadananda, *supra* note 25.

263. Harkauli, *supra* note 229.

264. *See* Harkauli, *supra* note 229.

265. Mayank Bhardwaj & Manoj Kumar, *Exclusive: PepsiCo accused of coercing farmers by group close to BJP*, REUTERS (Apr. 29, 2019, 9:20 AM), <https://www.reuters.com/article/india-pepsi-farmers-idINKCN1S51FJ>.

266. *Id.*

267. *Id.*

268. *Id.*

269. Mayank Bhardwaj, *Pepsi withdraws Indian potato farmer lawsuits after political pressure*, REUTERS (May 2, 2019, 8:05 AM), <https://www.reuters.com/article/us-india-pepsi-farmers-idINKCN1S817I>.

270. Sadananda, *supra* note 25.

271. Sadananda, *supra* note 25.

less than they deserve seems to be an ongoing understanding amongst those who wish to take advantage of Indian farmers. This can even be dated back to the Indigo cultivation era mentioned above—"the system led to gross abuses, as it was bound to in a country such as India, where the cultivators will, when they are needy, accept money under almost any conditions, reckless of the day of reckoning."²⁷²

This disparity in wealth can also cause hardships to the weaker party in relation to their ability to access legal resources.²⁷³ While this is due to various factors, the overall basis for this conclusion is that Indian farmers have been facing increasing economic hardships for decades, causing them to lower their living standards, all while their means of living (farming) becomes more economically unviable.²⁷⁴ Thus, one can infer that farmers will not have additional funds to spare to obtain the necessary legal resources for overcoming a dispute with a big corporation.

Unequal bargaining power can also be grounds for an overall imbalance of power. With the creation of a legal framework for contract farming under the Price Assurance Act, and the subsequent weakening of the existing APMC-regulated markets, there is cause for concern that the consequence will be the establishment of an oligopsony.²⁷⁵ That is, there will be numerous farmers wishing to sell their produce, with only a few large private buyers.²⁷⁶ As a result, farmers will lose their bargaining power.²⁷⁷ A study performed by researchers associated with the University of Pennsylvania found that the prices elected by farmers are determined by the farm's location.²⁷⁸ Thus, farms that are located in small, remote villages will have to increase their prices due to the high costs of transportation and a limited number of buyers.²⁷⁹ As a result, a monopsony may be triggered, leading to a market that caters to only one large buyer, who now has even more bargaining power over the already vulnerable remote farmer in setting prices and terms of the sale.²⁸⁰

This decrease in bargaining power under the farm laws also stems from the government's failure to provide the MSP guarantee.²⁸¹ As noted, the government's implementation of the MSP is a form of market intervention that shields the farmers from the effects of inflation.²⁸² There are real concerns amongst the agricultural community that large corporations and retailers will drive down the prices of

272. Asiaticus, *The Rise and Fall of the Indigo Industry in India*, 22 *ECON. J.* 237, 241 (1912), <https://www.jstor.org/stable/pdf/2221777.pdf>.

273. Datla, *supra* note 10.

274. Bhatnagar, *supra* note 259, at 44.

275. Bhatnagar, *supra* note 259, at 42; Will Kenton, *Oligopsony*, INVESTOPEDIA, <https://www.investopedia.com/terms/o/oligopsony.asp> (Apr. 23, 2022) (stating that an *oligopsony* occurs when the market for a product or service has a concentration of demand in only a few parties, resulting in each of those parties having substantial power over the sellers of said product or service. The effects of this type of market include buyer power over sellers, such as buyers' control over prices).

276. Bhatnagar, *supra* note 259, at 42.

277. Bhatnagar, *supra* note 259, at 42.

278. Bhatnagar, *supra* note 259, at 42 (citing Shoumitro Chatterjee et al., *A Study of the Agricultural Markets of Bihar, Odisha and Punjab: Final Report*, CTR. ADVANCED STUDY INDIA, UNIV. PA. (2020), <https://casi.sas.upenn.edu/agricultural-markets-study>).

279. Bhatnagar, *supra* note 259, at 42.

280. Bhatnagar, *supra* note 259, at 42; Julie Young, *Monopsony: Definition, Causes, Objections, and Examples*, INVESTOPEDIA, <https://www.investopedia.com/terms/m/monopsony.asp> (Sept. 14, 2022) (stating that a *monopsony* is a market condition whereby a single buyer dominates the market. One concerning outcome of this type of market is that the single buyer generally has a controlling advantage that drives down prices for the seller).

281. Bhatnagar, *supra* note 259, at 42.

282. Bhatnagar, *supra* note 259, at 42.

produce in the absence of the MSP guarantee.²⁸³ And with the MSP not actually codified anywhere, the government's verbal assurance that the policy will remain in place following enactment of the new farm laws has not offered much confidence to the farmers.²⁸⁴ Without having first consulted with farmers and agriculturists around the country, the Indian government failed to recognize how the omission of the MSP in the new framework would decrease the farmers' bargaining power and, in turn, favor the large corporations.²⁸⁵

Some legal scholars argue that an imbalance of power, in general, is not the main concern; rather, the imbalance of power only becomes an issue when it affects a party's self-determination.²⁸⁶ In other words, if a party cannot self-determine their own future or drive the outcome, the conciliation process will look no different than that of litigation.²⁸⁷ For example, an imbalance of power can affect one's "self-determination when one party has options for resolution that the other does not, whether that be the result of secrets (informational imbalance) or the presence of one party over the other."²⁸⁸ In the discussion up to this point, we saw how easy it is for corporations to have more options for resolution than farmers. For example, when a farmer does not have the adequate information and resources to sufficiently argue his claim, he may not attempt to do so.²⁸⁹ Farmers tend to lack understanding of free-market forces and price fluctuation.²⁹⁰ This may be further exacerbated by the fact that many farmers do not have access to the internet.²⁹¹ Knowing that farmers are unable to hold onto their produce for long periods of time have led corporations to effectively coerce farmers into selling their goods at low prices.²⁹² The new farm laws do not account for this insufficient capital and inaccessibility to storage facilities experienced by farmers.²⁹³

When one party has the capacity to use their power over the other party, the party without power may lose their ability to act in accordance with their self-determination.²⁹⁴ When power imbalances are present in the dispute resolution process, the whole of the resolution process becomes threatened until a neutral actor intervenes to ensure that both parties obtain equitable terms.²⁹⁵ One guide on Alternative Dispute Resolution explicitly states that ADR should not be used in this scenario, where the disadvantaged party needs to first establish their rights in order to reduce the imbalance of power.²⁹⁶ The absence of any governmental precaution in relation to these asymmetries of power and deficient mutual consent have laid a shaky groundwork for the conciliation process desired by the Indian government.

283. Bhatnagar, *supra* note 259, at 42.

284. Bhatnagar, *supra* note 259, at 42.

285. Bhatnagar, *supra* note 259, at 43.

286. Voyles, *supra* note 29; Holland, *supra* note 29.

287. Voyles, *supra* note 29.

288. Holland, *supra* note 29.

289. See Sadananda, *supra* note 25.

290. Dhaliwal, *supra* note 118, at 30.

291. Dhaliwal, *supra* note 118, at 30.

292. Dhaliwal, *supra* note 118, at 30.

293. Dhaliwal, *supra* note 118, at 30.

294. Holland, *supra* note 29.

295. Holland, *supra* note 29.

296. BROWN ET AL., *supra* note 154, at 13.

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VI. POSSIBLE SOLUTIONS FOR FUTURE ADR USE IN AGRICULTURAL CONTRACTS

On November 30, 2021, India's parliament passed a bill to repeal the three farm laws at the center of this article.²⁹⁷ It appears that the central government finally caved under the pressure of the world's largest protest in human history.²⁹⁸ However, the dissatisfaction of farmers is far from relinquished.²⁹⁹ As the farmers see it, the issues that the farm laws sought to address are still present, and merely repealing the laws will not suffice.³⁰⁰ Until the Indian government addresses the continuation of the country's agrarian crisis, which is centered around unpredictable and futile produce prices, farmers will not be at peace.³⁰¹ Due to this continuing need for agricultural reform, exploration of possible alternative dispute resolution policy considerations seems necessary. Below are some proposed resolutions to the current mechanisms in place:

A. Opt-Out Model

If similar legislation arises in the future, inclusion of an effective ADR provision is still possible. One solution is to implement ADR provisions that focus on eliminating concerns surrounding consent issues. To take elements from Italy's model, under an opt-out model, the parties would be required to attend one mandatory session of whichever dispute resolution process the provision calls for before their case can be heard by a court.³⁰² The dispute resolution process is initiated when a request is submitted by the aggrieved party to an approved public or private ADR provider.³⁰³ Further, the provider must be located in the territory of the court that would have jurisdiction over the parties' case.³⁰⁴ Attendance by both parties and their respective counsel is a requirement.³⁰⁵

After the parties have participated in this initial resolution session, they may mutually agree to continue with the process, or either party may decide to end the non-judicial communications (i.e., "opt-out") and take the matter to the judiciary.³⁰⁶ Under this opt-out approach, the compulsory condition under the law (to pursue ADR) is satisfied.³⁰⁷ However, if the parties decide to see ADR through and reach a mutual agreement, both parties, their respective advocates, and the ADR provider must sign an agreement, which will automatically become enforceable and binding.³⁰⁸

297. *Farm laws: India farmers end protest after government accepts demands*, BBC (Dec. 9, 2021), <https://www.bbc.com/news/world-asia-india-59566157>.

298. D.K. Giri & T.N. Prakash Kammardi, *India's farmers want the agrarian crisis to end*, IPS (Jan. 26, 2022), <https://www.ips-journal.eu/topics/economy-and-ecology/indias-farmers-want-the-agrarian-crisis-to-end-5670/>.

299. *Id.*

300. *Id.*

301. *Id.*

302. Kinhal et al., *supra* note 233, at 13.

303. Kinhal et al., *supra* note 233, at 13.

304. Kinhal et al., *supra* note 233, at 13.

305. D'urso, *supra* note 240, at 58.

306. Kinhal et al., *supra* note 233, at 13.

307. Kinhal et al., *supra* note 233, at 13.

308. Kinhal et al., *supra* note 233, at 13.

This opt-out model can generate a better understanding amongst the community when it comes to ADR because it requires attendance of an initial ADR session, which is treated as a means to inform the parties about the process.³⁰⁹ This ultimately grants parties the opportunity to learn more about the process and make an informed decision about whether or not they should take their case to court.³¹⁰ For one, it exposes parties to the possibilities of ADR without binding them. If parties feel like they have a choice in how they handle their cause, they lend more trust to the process. Additionally, this model ensures that cases are not brought to court prematurely. By requiring this first session of ADR, the “mandatory” element of ADR that the government initially sought out is still accomplished, to a degree. But it nevertheless leaves parties with a choice and addresses the element of consensus at issue in the Price Assurance Act.

B. Establish More ADR Centers; Farmers Tribunal

One limitation to the opt-out approach is that it assumes that both parties will know whether that first session of ADR was beneficial to their interests or whether they should discontinue ADR. Under current ADR conditions, it is likely that farmers would not know how to assess this first session of ADR. This is due in large part to the government’s failure to offer the process to the masses.³¹¹ There are already a few centers around India, however, they do not make a dent in the backlog of cases in the judicial system, nor do they reach the more rural, vulnerable communities.³¹² Speaking at a national conference on mediation in April of 2022, the Chief Justice of India, NV Ramana, stressed the present need for more ADR centers and pleaded with the courts to make an active effort to send more cases to ADR.³¹³ As he put it, “[c]onflicts have a human face. One must have the foresight to look beyond the conflict. A dispute should not spoil your relationship. Prolonged litigation can drain resources and cause animosity, and conflicts can be resolved in a neutral environment, where both parties are in a win-win situation.”³¹⁴ The Chief Justice also emphasized the importance these centers would have on training practitioners and lawyers, “. . . new-age lawyers and law students should be equipped with the developing expertise in negotiation and mediation.”³¹⁵ Thus, establishing more ADR centers would have a direct effect on a multitude of lingering issues in the India legal system.

Building an ADR infrastructure around the prospect of informing parties and aiding them in making mutually beneficial decisions based on this knowledge of

309. See D’urso, *supra* note 240, at 58.

310. Giulio Zanolla, *The New Italian Mediation Law: Experimenting with a “Soft” Approach to Mandatory Mediation*, CPR INST. BLOG (Feb. 11, 2016), <https://blog.cpradr.org/2016/02/11/the-new-italian-mediation-law-experimenting-with-a-soft-approach-to-mandatory-mediation/>.

311. Astha Dhawan, *A Birds Eye View Of Current Scenario Of ADR In India*, VIA MEDIATION ARB. CTR., <https://viamediationcentre.org/readnews/MTM2/A-Birds-Eye-View-of-Current-Scenario-of-ADR-in-India> (last visited Apr. 23, 2022).

312. See generally Gautam Matani, *The need of ADR and ODR system in India*, INDIA LEGAL SOL., <https://indianlegalsolution.com/the-need-of-adr-and-odr-system-in-india-with-a-comparative-analysis-with-the-united-kingdom/> (last visited Aug. 21, 2022).

313. *Alternative dispute resolution could transform legal landscape*, BUS. STANDARD (Apr. 9, 2022), https://www.business-standard.com/article/current-affairs/alternative-dispute-resolution-could-transform-legal-landscape-cji-ramana-122040900686_1.html.

314. *Id.*

315. *Id.*

the process can offer many benefits. First, the centers could provide educational resources in addition to services. Awareness of ADR and its possible benefits is crucial to ADR's acceptance, and the establishment of these centers could aid in the dissemination of information to the community at large.³¹⁶ This aspect directly addresses the informational imbalance that was of concern in the Price Assurance Act. Further, these centers could require that those conducting the process are qualified to do so. In other words, those interested in facilitating ADR must go through extensive training.³¹⁷ This allows for proper classification of a case to ensure that the parties are adhering to the best resolution option for their particular dispute.³¹⁸ However, the success of mediation centers can only go as far as the accessibility to them. In other words, there would also need to be enough centers established in each state as to maintain the output of cases required by the system if it is going to have a positive effect on the judicial system already experiencing an influx of cases.³¹⁹

Notwithstanding the benefits of these centers, there remains concern that those conducting the ADR process, while qualified under this scheme, would still lack awareness into what farmers face on a daily basis. No amount of training can truly apprise an ADR facilitator to be able to relate to farmers. For this reason, a better solution may be to organize a farmers tribunal. This consideration stems from the fact that farmers "may hardly be benefited by [ADR] mechanisms unless persons who understand [their] mind-set interact with [them] in a suitable and congenial environment, to solve disputes with the minimum of costs."³²⁰

A tribunal of this sort would be established and governed by the statute which creates it.³²¹ India has enacted various statutes in order to form a tribunal, as they relate to a number of areas of law. For example, India's Parliament established the National Green Tribunal Act to grant jurisdiction and authority to a tribunal to act as a specialized judicial body, equipped with persons of necessary expertise, to adjudicate environmental cases throughout India.³²² The Act also sets forth the composition of the tribunal: a full-time chairperson; not less than 10 (no more than 20) full-time judicial members; and not less than 10 (no more than 20) full-time expert members.³²³ In addition, the chairperson may invite any person having specialized knowledge and experience as it deems necessary to assist the tribunal.³²⁴

Some other examples of tribunals are the National Company Law Tribunal, which Parliament established to grant jurisdiction in regard to insolvency and restructuring proceedings against corporations in India.³²⁵ Another example is the Debt Recovery Tribunal, which oversees proceedings against individuals and partnerships.³²⁶ As you can see, tribunals may be formed as a means to adjudicate claims related to a particular area of law.

316. S. Chaitanya Shashank et al., *ADR in India: Legislations and Practices*, ACADEMIKE (Jan. 7, 2015), https://www.lawctopus.com/academike/arbitration-adr-in-india/#_edn6.

317. *Id.*

318. *Id.*

319. *Id.*

320. Konoorayar et al., *supra* note 233, at 34.

321. Zia Mody et al., *The Dispute Resolution Review: India*, L. REVIEWS (Feb. 17, 2022), <https://thelawreviews.co.uk/title/the-dispute-resolution-review/india>.

322. National Green Tribunal Act, 2010, Bill No. 19 of 2010 (June 2, 2010) (India).

323. National Green Tribunal Act, 2010, Bill No. 19 of 2010, §§ 4(1)(a)–(c) (June 2, 2010) (India).

324. National Green Tribunal Act, 2010, Bill No. 19 of 2010, § 4(2) (June 2, 2010) (India).

325. Mody et al., *supra* note 321.

326. Mody et al., *supra* note 321.

Thus, a farmers tribunal would grant authority to a designated group of persons qualified to hear disputes related to agriculture and farming contracts. Similar to the National Green Tribunal, the farmers tribunal would be made up of judicial members, experts, and other farmers and agriculturalists,³²⁷ or whomever is necessary to assist the tribunal on a particular dispute. This ensures that people who understand the concerns and hardships that farmers face are involved in the process. Under this model, buyers are also offered protection in that the tribunal would still involve judicial members who are equipped to solve complex matters and are capable of offering solutions.³²⁸ In addition, the positive qualities desired in ADR are still present: it would be cost-effective due to court avoidance, it would be efficient due the involvement of those who better understand the issues at hand, and it would be speedy due to the fact that farming disputes are the sole focus of these tribunals.³²⁹

The interest in consensus is more likely to be met when farmers are presenting their case to others that are, or have been, similarly situated to them and who understand their grievances. This also eliminates the anxiety around an imbalance of power because farmers acquire the ability to communicate with a variety of neutral parties and to obtain the resources and information they need. Nonetheless, corporations would not be deterred from presenting the dispute to a tribunal because persons with legal training and knowledge will be involved in the process to offer an objective eye to the dispute.

C. *Address Specific Issues of the Existing APMC System*

At the end of the day, none of these solutions truly address the main concern of farmers, which are related to the agricultural system as a whole. One of those concerns is the government's pseudo-guarantee of the MSP on all crops.³³⁰ Addressing this interest of the farmers could result in the resolution of other concerns. For example, without the MSP guarantee under the Price Assurance Act, farmers feared they would be left vulnerable to big corporations.³³¹ So, while this solution is focused on the system at large, codifying the MSP would subsequently provide solace to farmers in relation to their concerns surrounding consensus and power imbalances when it comes to doing business with corporations.

Short of eliminating CAs altogether, the system could cap the commission fees paid to CAs.³³² This would lead to more efficient markets while safeguarding the bargaining power of farmers.³³³ However, this restriction will not go very far unless there is also expanded access to institutional credit with reasonable interest rates for farmers.³³⁴ Without that safeguard in place, farmers will continue their reliance on CAs for loans, further promoting farmers' unsustainable debt.³³⁵ Lastly, the system could benefit from risk-mitigating policies that protect farmers' economic

327. Gupta, *supra* note 191.

328. Gupta, *supra* note 191.

329. Gupta, *supra* note 191.

330. Giri & Kammardi, *supra* note 298.

331. Giri & Kammardi, *supra* note 298.

332. Bhatnagar, *supra* note 259, at 48.

333. Bhatnagar, *supra* note 259, at 48.

334. Bhatnagar, *supra* note 259, at 46.

335. Bhatnagar, *supra* note 259, at 48.

security.³³⁶ Without policies that offer this protection, farmers are left to rely on the agricultural sector for employment.³³⁷

To address these concerns within the overarching system, India could adopt dispute system design (“DSD”) processes. DSD is the identification and analysis of particular disputes within a system in order to formulate a deliberate design of one or more processes for managing similar and/or continuous disputes.³³⁸ An example of this are court programs which offer mediation or summary jury trials.³³⁹ One proposed analytical framework is to identify the goals of the system, the stakeholders, the processes and structure in place, the resources available, and the success and accountability of the system.³⁴⁰

Applying India’s agrarian issues to this framework could lay the foundation for building a system catered towards addressing repeat issues seen in the agricultural sector. For example, the government could create a dispute system designed to address pricing conflicts amongst farmers and buyers. Having one or more processes in place for handling this specific type of dispute promotes a more focused approach to handling the controversy versus mandating a uniform procedure that may not fit the ongoing needs of the parties. Furthermore, establishing a DSD process could work coextensively with any future proposed reforms to the agricultural system as a whole. In other words, reform attempts need not also express resolution procedures for disputes that arise under the reformed system. Instead, DSD processes could maintain their place in the overarching system and be there when called upon when a particular dispute arises.

VII. CONCLUSION

The situation in India remains dire. At first glance, it appears that the farmers achieved what they set out to do when they began protesting over two years ago; after all, they defeated the farm laws. But the fact that it took so long for the central government to wave its white flag negates this feeling of accomplishment for many.³⁴¹ Farmers realized a new level of distrust for their leaders, as they walked away from these protests, tallying how many lives had been lost since it all started.³⁴² And at the end of the day, those flaws that deeply influence the agrarian crisis in India have not been dealt with. Many farmers insist that they will continue voicing their concerns until the government guarantees the MSP on all crops.³⁴³ This guarantee, combined with further safeguards, may even lead to those cooperative, satisfactory contracts between farmers and corporations, just as the government hoped for. But until those flaws in the system are addressed, it is safe to say that any mandate for non-judicial relief on the aggrieved party to a farming contract will be insufficient and inadequate. And while this paper offered some possible

336. Bhatnagar, *supra* note 259, at 47–48.

337. Bhatnagar, *supra* note 259, at 48.

338. Janet Martinez et al., *Dispute System Design: A Comparative Study of India, Israel and California*, 14 CARDOZO J. CONFLICT RESOL. 807, 807 (2013).

339. *Id.* at 808.

340. *Id.* at 813.

341. *Indian Farmers in No Mood to Forgive Despite Modi’s U-Turn on Reforms*, *supra* note 8.

342. *Indian Farmers in No Mood to Forgive Despite Modi’s U-Turn on Reforms*, *supra* note 8.

343. Giri & Kammardi, *supra* note 298.

solutions to future ADR attempts in this context, we will have to wait and see how the Indian government chooses to go forward with these concerns in mind.