

# Don't repeal – recall the farm laws

The Constitution provides a way to break impasse and offers the government a tactical retreat

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Farmers raise their hands in protest against the farm laws at Punjab's first Kisan Mahapanchayat in Ludhiana. (Express Photo by Gurmeet Singh)

A respected political commentator recently concluded that “as far as the farm laws are concerned, the Modi government has already lost the battle”. Describing the farmer’s blockage of New Delhi as the Prime Minister’s “Thatcher or Anna moment”, the same commentator counsels a “tactical retreat”. Another learned commentator has said that “as a last resort”, the government may make the farm laws optional. It is sage advice. If we were to assume for a moment that a “tactical retreat” was deemed desirable by the PM and the Cabinet, the question would arise: How would such a retreat be made?

Any discussion about how good or bad the farm laws are for farmers or the country now seems to be an irrelevant consideration. The protest highly likely won’t end until the laws are repealed. To repeal these laws, Parliament would have to enact a Repealing Act. This might be politically humiliating, but irrespective of whichever party, or coalition commands the confidence of the Lok Sabha, the passing of a Repealing Act will set a dangerously bad precedent in our country’s constitutional and political traditions. Everything should be done to prevent such a precedent. Luckily, the Constitution provides a potential way to break this impasse without setting such a precedent.

According to Article 246 our Constitution, Parliament can enact a law on any subject listed in List 1 of Seventh Schedule (“Union list”), and state legislatures can do so on any subject listed in List 2 of the same schedule (“state list”). Both have concurrent power to enact any law listed in List 3. Interpreting Article 246, the Supreme Court

in many leading decisions has held that if the subject of legislation falls in List 2, Parliament cannot enact a law on that subject. However, this law laid down by the Supreme Court does not apply if Article 252 is invoked. Generally, Parliament cannot enact a law on any subject in the state list, but per Article 252 of the Constitution, if the legislatures of two or more states resolve that it is desirable that Parliament should enact a law on a subject in the state, then the general prohibitions of Article 246 do not apply. Enabled by a resolution of two or more state legislatures, Parliament can now enact the law in the generally forbidden area of the state list but such a law is applicable only to the states that originally resolved to enable the Parliament. However, if more state legislatures want to adopt this Parliamentary legislation, all they have to do is pass a resolution in the house. Or they can study the Parliamentary law and draft a law they like and enact it, because the subject of legislation is outside Parliament's jurisdiction anyway.

Simply speaking, let's take the example of entry 14 in the state list. It says: "agriculture, including agricultural education and research, protection against pests and prevention of plant diseases." Let's say that state legislatures of states X and Y resolve that they would like Parliament to enact a law on this subject for them. The resolution is necessary because otherwise Parliament can't enact a law on this subject since it falls in the exclusive jurisdiction of the state legislatures. But once they resolve, the law enacted by Parliament would be applicable to the states. And other states can join in either by accepting Parliamentary law by resolution, or by enacting a law of their own.

How can this be used to break the impasse? One way could be to convince two state legislatures to invoke their authority under Article 252, and to pass a resolution enabling Parliament to enact a law under, say, entry 14 of the state list. So enabled, Parliament can then enact a "Recalling Act", empowered whereby the President by notification would "recall" the farm laws. Parliament has the final authority to decide on its internal procedures that are not subject to judicial review, and it can enact any law it likes so long as it doesn't violate the Constitution. A Recalling Act would not "repeal" the legislation, as lawyers understand it, but would "recall" it for further deliberations.

For practical intents and purposes, the farm laws would cease to exist, and the Recalling Act should say so clearly in order to avoid future interpretational disputes. After being so "recalled", the laws could be placed before Parliament for due discussions and deliberations, and could later be enacted in a suitable form for the purposes of the original state legislatures that had passed the enabling resolutions under article 252. Other states can opt in later by resolution, or have their own legislation.

There are several benefits to this approach. First, the original constitutional bad karma of introducing the laws via ordinance route could be corrected. Second, we could avoid setting a dangerously bad precedent in our constitutional and political traditions. Third, the moment farm laws are recalled by the "Recalling Act", the farmers could break their protest since there would be no reason for the protests to go on. The laws against which they were protesting have been recalled, and are no longer binding on anyone. The farmers can go home and be with their families, the police and paramilitary forces could stand down and stand easy, the construction work on the highway can be resumed, main highways to Delhi will be open again, and most importantly, the debate can be shifted to where it should have been in the first place: Parliament.

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