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## India's Agricultural Market Acts of 2020: Implications for (small) farmers with special reference to Punjab

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### Abstract

Agricultural markets are key to ensuring higher farmer incomes, but in India, agricultural market reforms have been stuck for almost two decades as agriculture is a state subject. The Union Ministry of Agriculture and Farmer Welfare (MoAFW) framed two new Acts on agricultural produce wholesale markets and contract farming (besides amending the Essential Commodities Act, 1955) in 2020 to allow and encourage new market channels in terms of buying from or working directly with farmers. These were parallel to state governments changing their APMC Acts, following the Model APMC Acts suggested by the Union MoAFW. This paper assesses the rationale and benefits of the 2020 Acts, and their implications for farmers and other stakeholders. It also examines the major provisions of the new Acts, i.e. APMC *mandi* bypass Act, 2020, which creates a new trade area outside the purview of the APMCs, and the Contract Farming Act, 2020, besides the amendments to these Union Acts by the state government of Punjab (2020), as informed by research studies on various marketing channels used by farmers and their experience of the same. The paper highlights some major lacunae of the 2020 Acts, in the context of Punjab agriculture, and examines the utility of the Punjab's amendments to the Central Acts. The paper highlights the need for legal provisions to protect smallholder interests and leverage new channels for their development.

**Keywords:** agricultural markets, reform, Punjab, small farmers, contract farming

### 1. Introduction

The new Union Acts on agricultural markets (constitutionally a state domain) intend to achieve a unified national market, and provide choice to farmers when selling their produce, with better price discovery, as well as attracting private investment in agricultural markets. However, the Acts have attracted serious opposition from farmer unions and many political parties despite the government claiming and highlighting various benefits of the new Acts. Six state governments have passed resolutions against these Acts in their legislatures and three states have also attempted to amend the Union Acts at their levels to enhance protection of the interests of farmers and other stakeholders. In this context, it is crucial to discuss major aspects of the two new Acts: the Agricultural Produce Market Committee (APMC) *mandi* bypass

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Act -- a more popular name for the Farmers' Produce Trade and Commerce Act, and the Contract Farming (hereafter CF) Act in terms of regulation and promotion of agricultural produce markets.

Section 2 examines the major provisions of the APMC mandi bypass Act, and related perceptions about the future of APMC mandis, and the Minimum Support Price (MSP) and procurement mechanism of the Union government from the perspective of small farmers. It also examines implications for Punjab farmers and other stakeholders in the state besides assessing the usefulness of Punjab's amendment to the central Act. Section 3 examines the CF Act in the light of the experience of CF practice in India so far, with special reference to Punjab and the relevance of Punjab's amendments to the CF Act. The final section concludes the article with some ways forward for making regulation of the new channels more effective and specific, in the light of the problems of the APMC mandi system and the practice of contract farming, in order to leverage the new channels for more inclusive and sustainable agricultural development.

## **2.The Farmers' Produce Trade and Commerce Act, 2020: Issues and implications**

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act 2020 intends to promote efficient, transparent and barrier free inter-state and intra-state trade of farm produce outside the physical premises of APMC markets (or deemed markets notified under various state agricultural produce marketing legislations). It also aims to provide a facilitative framework for electronic trading and achieve national integration of India's agricultural markets. Previously, under the state APMC Acts, there was a notified market area from which all produce was to be transacted within the designated APMC yards and sub-yards, or else buyers had to seek permission under the amended APMC Acts as per the model APMC Act 2003 and Model Agricultural Produce and Livestock Markets (Promotion and Facilitation) ((APLM(PF)) Act, 2017. This permission had to come from the local APMC, for buying outside the mandi or undertaking contract farming. However, the produce could still be subject to the same or similar taxes and levies as the produce transacted inside the market yard.

It is important to note that the rationale for the 2020 reforms is based on the assumption that the majority or most of the farm produce goes through APMC mandis, and that these mandis had not been discovering prices efficiently and not letting other channels like direct purchase, private wholesale markets and CF flourish as there is a conflict of interest involved.. But, the reality is that only 17%-25% produce goes through them. This is also due to the fact that there are

far fewer mandis than needed (only 7,000 against 42,000 needed), and as per the recommendation of the National Commission for Farmers, a mandi should be available to a farmer within a radius of 5 kms. (Narayanan, 2020; Shah, 2021). Further, in major agricultural states, APMCs are multi-stakeholder elected bodies. Only Punjab has not had an election to APMCs in the last 40 years.

The new Act creates a new 'trade area' outside the APMC market yards, where any buyer with a Permanent Account Number (PAN, an income tax ID in India) can buy directly from farmer sellers and the state government cannot impose any taxes on such a transaction. Hence, the new central Act would lead to the creation of two parallel markets in each mandi town instead of a single market. Also, the recent action (September, 2020) by the Haryana government to stop neighbouring Uttar Pradesh farmers from selling paddy at MSP in Haryana shows that inter-state barriers are not so easy to remove by central regulation, unless states are on board for such opening up of markets. Similarly, Food Corporation of India (FCI) buying from APMC mandis in Punjab through the *Arthiyas* (commission agents), even after the coming into effect of new Act, gives a message contrary to the spirit of the Act (Singh, 2020).

More significantly, the Act includes trader-to-trader transactions within a state or across states under the definition of farmer produce. How can this be justified, as once the primary transaction is completed, it stops being farmer produce as farmer is no longer involved in this transaction? This is similar to the Farmer Producer Organisations (FPOs) asking for exemption from income tax on their income, arguing that since they deal with their member farmers' produce who are exempted from paying income tax, FPOs should also be exempted from income tax (Singh, 2020).

More importantly, the 'new trade area' has no provision for counterparty risk coverage, unlike the APMC system where all buyers and facilitators are licensed by the APMC and have to pay licensee fees and bank guarantees, so that farmer risk against any payment default could be secured.

Further, some of the provisions, such as payment to farmer by trader on the same day, or within a maximum of three days if procedurally so required, are worse than what already exists under the APMC Act in some states. For example, in Madhya Pradesh, payment for the produce bought in the market yard has to be paid on the same day to the seller, right at the market yard (MPSAMB, 2005).

The hope that this kind of opening up of markets will bring new investments in agriculture may also be misplaced, if one goes by the experience of states like Kerala which never had an APMC Act; or Bihar, which repealed the APMC Act

in 2006 (Singh, 2015; Bera, 2021); or Maharashtra, which delisted fruits and vegetables from APMC in 2018. It is important to note that laws cannot substitute for policy. Therefore, a policy has to be in place to develop the agricultural sector as a whole. New investment would need incentives, and not just ease of doing business (Singh, 2020a).

### **2.1 Why farmer and *Arthiya* protests and would APMCs disappear?**

It is important to note that the Minimum Support Price (MSP) based public procurement regime has been very unfair to some farmers and some states, and mostly benefits a few crops like wheat, paddy and cotton in Punjab, Haryana, MP, Telangana, Chhattisgarh, UP and Odisha. This represents not even 10% of India's farming households: because most of them are double counted in typical data, as they grow both wheat and paddy. However, it is true that the list of MSP based procurement states has expanded, due to decentralized procurement of farm produce, now encompassing 15 states (Gupta et al, 2020). But, most of the small and marginal farmers in these and many other states are still left out of the public procurement net.

There is a (mis)perceived linkage between the new APMC mandi bypass Act, and the Minimum Support Price (MSP) based public procurement system, namely, the belief that MSP-based procurement by the government would not continue once this Act comes into force. It is important to recognise that the MSP and procurement system are policy issues and not legal ones, unlike the APMC mandi bypass Act. The fear being expressed by farmers and their unions about MSP and public procurement arises from the fact that the playing field between the new trade area and APMC market buyers would be unequal, since there would not be any taxes in the new trade area, whereas there are significant buying costs in APMC-mandi based purchases, going as high as 8.5% in Punjab, including 2.5% commission for the commission agents (CAs or *Arthiyas*). Therefore, due to the lower buying cost, traders and agents might move out of the APMC market yards and start buying in the new trade (non-APMC) area. The union government agencies like Food Corporation of India (FCI) and the Cotton Corporation of India (CCI) could also proactively shift (as is being planned according to media reports) to the new trade area to buy directly from farmers. This would still give access to MSP for farmers but the CAs could suffer, as they would not be able to charge commissions which increase with every hike in MSP (Singh, 2020). In fact, after the new Acts, for the first time, CCI bought cotton in Punjab directly from farmers in APMC mandis without paying commission to the *Arthiyas*. If the APMC mandi declines as a channel due to this new Act, then what would be the source of reference price for private buyers in the new trade area? Also, what happens to the argument then that the central Act is more about giving choice of channels to farmers as these would

be only private market channel without any mechanism to discover prices competitively unlike with an auction system in the APMC mandi?

That existing APMCs mandis would face a crisis after the new Act comes into force is clear from the already available reports, which suggest that trade is moving outside the APMCs, and state governments are now lowering the market fees and other cesses to retain some competitive position, as illustrated by the case of Madhya Pradesh (Arora, 2020; Siddique, 2020; Kakvi, 2020; Dwary, 2021).

Farmers' and other stakeholders' apprehension about MSP and procurement going away also comes from the 2020 Acts being linked to some previous policy documents, such as the Shanta Kumar Committee Report of 2015 and the Commission for Agricultural Costs and Prices (CACP) reports, which suggested reduced procurement and an end to open-ended procurement from states like Punjab to cut down buying costs of FCI. It is feared that FCI itself may start procuring directly from the new trade area to cut down its buying costs, especially market fees and *arthiya* commissions. In effect, it is the changes in the 'social contract' between the state's farmers and the Union government which is the root cause of this apprehension.

For CAs, the more problematic aspect of the new Acts is that, currently, they typically interlock handling of the farm produce with cash and kind credit to farmers for various purposes, and recover their loans from such sales proceeds of farmers in the APMC market (Singh, 2021; Shah, 2021). In fact, in Punjab, the payments for farmer produce are made to the *Arthiyas*, not the farmers, even by FCI and CCI, and this has been an issue for at least two decades. The state government has not allowed the central agencies to pay directly to farmers for various political economy reasons, including the power of the *Arthiya* lobby, as well as many of the CAs being also large farmers who hold power in the state government and its agencies. The state government is also opposing a recent (March 2021) central directive of the FCI to its food and civil supplies department to pay directly to farmers in their bank accounts citing the practice of large scale (informal) leased land based cultivation of crops which cannot be identified with land records of sellers as they are not owners and also the reasoning that farmers can't do without the credit from the *Arthiyas*.. The CAs are also now being described as a 'necessary evil,' essential to the APMC mandi system, or as service providers (Sinha, 2020). Of course, the *Arthiyas* may get into a new role of being facilitators or agents of corporates in the new trade area. But, they would not be able to interlock the credit and produce or input markets as in an APMC mandi and would have to be satisfied with lower commissions. However, it may still not mean that the buyers in the new trade area would pass on even a part of the lower buying cost to the selling farmers in the form of

higher produce purchase prices (Singh, 2020c). Nevertheless, it can be argued that the disintermediation in farm produce markets, which means removing the *Arthiyas*, has been long overdue: indeed, Madhya Pradesh made that move as long ago as 1985.

## 2.2 Punjab's half-hearted APMC Mandi Act amendments of 2020 and of 2017

Punjab tried to undo the central reform of agricultural markets with the amendment bills, but ended up mainly focusing on paddy and wheat prices by making MSP the minimum purchase price for any buyer in any channel, penalizing any violation of that restriction. In doing so, the state government was clearly seeking to protect its own revenue, along with other objectives. However, farmers producing other crops, such as cotton or oilseeds, or even maize, for which there is an MSP based procurement provision from the Union government, do not receive protection under this bill (GoP, 2020). This is despite the fact that cotton and maize have been selling at below MSP in the state during the current season (2020-21). It is unfortunate that the thinking of the state government did not go beyond wheat and paddy. The MSP is declared for 23 crops, but none of the other crops' farmers, or those trying to diversify under CF would have the MSP protection of the new bills.

On the issue of enforcement of MSP for all buyers, Punjab's APMC Mandi Bypass Act amendment bill makes buying below MSP an offence which shall be punishable with a term of imprisonment of not less than three years and a fine. But why would a buyer compel or exert pressure on seller farmers and how would that be established? It is more likely that a farmer would be more than willing to sell below MSP, as once the farmer brings produce to the market, it is difficult to take it back -- it would be like taking a dead body back from the cremation ground (Singh, 2020b).

Even earlier, while amending the APMC Act in 2017, and framing rules for it in 2020, Punjab provided for special market yards, private market yards, producer market yards (*Kisan Mandi*) and producer consumer market yards (PCMY). With regard to the setting up of private wholesale market yards, which gave for the first time a choice of a public and a private mandi for the farmer seller, the Act stated '... Provided that the above yard can be established only for the business relating to fruits, vegetables, livestock and its products, woods, flowers and cannot be established within a radius of five kms. from the existing notified principal or sub-market yards' (p.4). This restriction applies to the other two markets i.e. PCMY and Kisan Mandi as well (p.5). This provision shows that Punjab had protected its *arthiyas* and traders (kuccha and pucca *arthiyas* respectively) in the existing APMC mandis, as most of them deal in foodgrains

(wheat and paddy) and cotton which are crops mostly bought by public agencies i.e. FCI and CCI. By excluding these crops from the new market arrangements, the *Arthiya* vested interest was largely left untouched by the amended Punjab Act of 2017 (Singh, 2020c).

So far as direct payment to farmer seller-a long pending and serious issue in Punjab, is concerned the Act states: 'The *Kacha arhtia* (commission agent) or the buyer, as the case may be, shall make payment to the seller through electronic transfer after the weighment is over. If payment is not made by the *Kacha Arhtia* or buyer, as the case may be, in the manner, as stated above, then the same shall be recovered by the market committee concerned from him as an arrears of land revenue and the first lien shall be of seller's right and it shall be made to the seller concerned'. 'Provided further that that the seller shall be at liberty to receive payment up to rupees ten thousand in cash in a calendar month for the agricultural produce sold by him during that month. ... Delivery of agricultural produce after sale shall not be made or taken unless and until the *Kacha Arhtia* or, if the seller does not employ a *Kacha Arhtia*, the buyer has given to the seller a sale voucher in Form J mentioning the payment mode and its authentication, the counterfoil of which shall be retained by the *Kacha Arhtia* or the buyer, as the case may be (p.20-21; Singh, 2020c). This is more about retaining payment to farmers through the *Arthiya* despite the issue being alive for more than 10 years now.

### 3. The CF Act, 2020, and its limitations

It is important to recognise that CF has been practiced in India since the 1960s in the seed sector, and in other farm produce in many states, including Punjab and Haryana, since the 1990s, with PepsiCo undertaking tomato and potato CF. There is a widespread practice of CF across crops, states and agencies (public, private and multinational) in India, covering dozens of crops and livestock products with hundreds of CF projects or schemes, for domestic processing or for export, and there have been dozens of studies over the last 20 years on its performance and experience. CF has been permitted in most states as per the model APMC Act 2003 of the MoAFW wherein three new channels of farm produce buying and selling i.e. direct purchase, CF and private wholesale markets, were made legal. Most states adopted this within a few years, with one or two exceptions, and later, under the model Agricultural Produce and Livestock Marketing (Promotion and Facilitation) (APLM(P&F)) Act, 2017 as well as the separate model Agricultural Produce and Livestock Contract Farming and Services (Promotion and Facilitation), (APLCF&S (P&F)) Act, 2018. Punjab was the only state which, in 2013, framed a separate Act on CF

instead of providing for it under the APMC Act, which it had not amended adequately until in 2017. However, this separate CF Act (which was technically not needed) was never operationalized.

CF is a system for the production and supply of agricultural and horticultural produce by farmers/primary producers under advance contracts, the essence of such arrangements being a commitment to provide an agricultural commodity of a type (quality/variety), at a specified time, price, and in specified quantity to a known buyer. It basically involves five things -- pre-agreed price, quality, quantity or acreage (minimum/maximum), place of delivery and time of delivery/supply (Singh, 2002). For buyers, CF is the only other option in India outside of buying from APMCs or private wholesale markets, and direct purchase as a corporate farming option is simply not available in India due to the Ceilings on Land Holdings Act, under which non-agriculturists cannot own agricultural land, and the Land Leasing Act, under which they cannot even lease in agricultural land, both Acts having been passed at the state level. Hence, if a company wants to procure desired quality raw material or farm produce in adequate quantity at reasonable cost, which may not be available in the open market or not even grown by farmers, e.g., processing variety (chips grade) potatoes in India before Pepsi came in, then CF is the only option in India, and this is what Pepsi used. For farmers, CF can potentially bring not only assured market and price to farmers but also new technology, seeds, extension services, and such other non-price benefits (Singh, 2020).

But, contract farmers in various parts of India have faced many problems like undue reductions in quality assessment on produce by firms, or no procurement of produce, delayed deliveries at the factory, delayed payments, low price, poor quality inputs, no compensation for crop failure or unexpectedly high cost of production, and even stagnation of contract prices over time, known as 'agribusiness normalization.' Default by both sides (companies and farmers) has been an issue (Singh, 2020) and exclusion of small producers remains a major issue as well (Singh, 2012). That CF has been problematic globally is underscored by the recent FAO initiative on promoting responsible CF (FAO and IISD, 2018).

But, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (the CF Act, 2020) uses the term 'farming agreement,' which itself is unusual, as it is being confused with other arrangements, like sharecropping or leasing agreements. CF is about contract first, with farming being part of it, not just farming. The biggest perception problem is that it is being confused with corporate farming (corporates doing their own farming on leased or owned land) due to the way CF is defined in the Act. The Act clearly says that the contracting agency cannot lay any claims on

a farmer's land and cannot even lease, mortgage or sell it. The model APMC Act 2003 had also protected farmer land clearly. Also, corporate farming is not possible as land leasing and land ceilings Acts at the state level are intact, though they may not remain so for long, going by what Karnataka, Rajasthan and Punjab have on their agenda in terms of opening up of land markets. However, since the model ALPCF&S (P&F) Act, 2018, land leasing has been made part of the CF definition, which is not accurate, as CF can never include land leasing.

The 2020 Act protects farmers' land when it states in Section 14: "No farming agreement shall be entered into for the purpose of (a) any transfer, including sale, lease or mortgage of the land or premises of the farmer; or (b) raising any permanent structure or making any modification on the land or premises of the farmer, unless Sponsor agrees to remove such structure or to restore the land to its original condition, at his cost, on the conclusion of the agreement or expiry of the agreement period, as the case may be". But, there is a problem in these provisions as some other provisions in the Act are contradictory. For example, the dispute resolution section states: "The amount payable under any order passed by the Sub-Divisional Authority or the Appellant Authority, as the case may be, may be recovered as arrears of land revenue." However, then again, it states in the next section (15), "Notwithstanding anything contained in section 14, no action for recovery of any amount in pursuance of an order passed under this section, shall be initiated against the agricultural land of the farmer." (MoAFW, 2020a). But, this still means it can be recovered from other assets and properties of the farmer. The confusion between contract farming and corporate farming created by the Act is so significant that the Rajasthan Amendment Bill, 2020 assumes that leasing is a part of CF. (Singh, 2021a). This provision of the amendment Bill is an outright misunderstanding of CF Act 2020, as a sponsor never cultivates a farmer's field under a CF arrangement, in which the farmer as a producer is central to the very concept of CF.

#### ***Poor design, mandi linkage and objective***

The very basic aspects of CF, such as acreage, quantity, and time of delivery, are not specified in the Act. This should have been a requirement for any law regulating CF, as these are mandatory aspects of such an arrangement, whether with supply of inputs or otherwise. The government claims that a farmer can withdraw from a contract arrangement anytime without incurring any penalties. This is again not true and cannot be a part of the arrangement if CF is to succeed. The Act also leaves out many sophisticated aspects of modern CF practice, including contract cancellation clauses, delayed deliveries or purchases and damages therein, and 'tournaments' in CF where farmers are made to compete

with each other and paid according to relative performance – a feature which is banned in many countries (Singh, 2020).

It is unfortunate that the Act links bonus or premium prices under contract arrangements over and above the guaranteed or pre-agreed price with APMC mandi prices or electronic market prices forcing this to be part of the contract agreement. This is anti-CF in essence. The price, like many other basic aspects of contract, should be left to the parties to negotiate and cannot be tied to any other channel, especially the APMC price, as the very rationale for bringing this law was to provide alternative channels to farmers and create competition for APMC markets which were ostensibly not discovering prices efficiently.

Another concern is that the Act is more about facilitation and promotion of the CF mechanism, rather than its regulation. That the Act aggressively seeks to facilitate CF is clear from the fact that it mentions that the essential commodities stock limits Act (ECA) would not apply to contract farmed produce. Why should this provision of another Act be specifically mentioned in another law which has nothing to do with this law directly or indirectly? (Singh, 2020). The CF Act guidelines even give a role to a sharecropper as third party in the contract agreement, which is surprising. Furthermore, they state that the contract agreement should meet the requirements of the Indian Contracts Act, while simultaneously keeping contract disputes outside the purview of the civil courts.

### **3.1 CF in Punjab and its CF Act, 2013**

In Punjab, only 30% of the agricultural landholdings are small or marginal, and they account for just 8% of the operated area. Small farmers in the state have been moving out of agriculture due to the phenomenon of “reverse tenancy,” i.e., they have been leasing out their lands to bigger operators -- medium or large holders who have the resources and linkages for modern farming or agribusiness. Importantly, Punjab is the only state in India where the size of operational holdings is increasing. The all-India trend is a declining average size in operational holdings (Singh, 2011).

Though the average size of contract growers' holdings compared with that of the state as a whole is not an exact indicator of exclusion of small growers, micro studies point to their exclusion. Contract growers for Frito-Lay (Pepsi) in Punjab had average operational holdings of 63 acres, with only 22 acres owned and the rest leased. None of the sample contract growers with Frito-Lay had less than 10 acres of operated land, in spite of the fact that the average size of holdings in the state was 9 acres and 70% of holdings were below 10 acres each (Singh, 2008). Another study of CF in Punjab showed that the average size of the operational holding of contract growers was more than one-and-a-half times that of the non-contract growers. It found ‘no marginal farmer (in the size group

of below one hectare) [...] operating under CF. A handful of small farmers (in the size group of one to two hectares) were operating' (Kumar, 2006; p. 5369).

In fact, one of the parastatal agencies in Punjab (Punjab State Co-operative Marketing Federation (Markfed)) placed advertisements in local newspapers many years ago publicizing its basmati rice CF program where it asked potential contract growers to contact its district managers if they were willing to grow at least three acres of basmati rice under CF with Markfed. The questions which arise from this kind of offer are: how many small or marginal farmers can spare three acres for basmati, how many can spare it for CF, and how many would like to spare it for CF with Markfed? A more recent study of CF arrangements of two firms for contract production of chicory and sugar beet from farmers in Punjab found that both mostly excluded marginal and small farmers from their operations. Only one firm had 6% of its contract farmers who were small, despite the fact that 28-32% of the farmers in their operating areas were marginal or small. Operated land holdings of contract farmers in both cases were double those of their non-contract counterparts, and even owned holdings were larger (Kaur and Singla, 2018). This bias in favour of large/medium farmers has been perpetuating the practice of reverse tenancy in regions like Punjab where these farmers lease in land from marginal and small farmers for contract production (Singh, 2002; Singh, 2009).

Punjab had created problems in 2013, when it framed a separate Act on CF, instead of providing for it under the APMC Act, which it had not amended until 2017. Many other states amended their APMC Acts to provide for CF. The major reason for Punjab going for a separate Act on CF can be found in the political economy of the state's agribusiness sector, wherein farming and trading interests have been at loggerheads in protecting their interests until recently. There has been a constant battle between the two lobbies on direct payments by buying agencies to farmers for their produce, and the issue has been unresolved for the last decade. Whereas the farmer lobby wanted direct payments, the *Arthiya* lobby opposed it vehemently. Direct payments hit the business of interlocking of credit, input and output markets run by *Arthiyas* in which a *parchi* (slip) system prevails for lending in kind to farmers and recovery of payments at the time of sale of produce.

Direct purchases (when permitted with the APMC Act amendment) would have reduced volumes in APMC mandis and, therefore, *Arthiyas'* and traders' hold on farmer produce. Furthermore, private wholesale markets (again under the APMC Act amendment) would have created competition for *Arthiyas*/traders operating from APMC mandis and for the Mandi Board itself. This was perhaps the reason that instead of amending the APMC Act, which would have involved allowing direct purchases and setting up of private wholesale markets, besides

permitting CF and, therefore, adversely affecting the *Arthiyas* and the Mandi Board, the separate CF Act route was taken.

In the Punjab Act, only temporary structures on a farmer's land for the duration of the contract could be put up by the buyer, and if these were not removed immediately after the expiry of the contract, these were to become the property of the producer. No recoveries of any dues or penalties could be made from the producer by way of sale or mortgage of his/her contracted land. This provision was in line with the model APMC Act, and removed fears about contracting companies staking claims on contract growers' land.

The district collector was to be responsible for CF dispute resolution and give a decision within 30 days, and no civil court could consider such cases. Decisions of the collector were to be like a decree of the court. A contracting party could appeal after payment of 50% of dues of the disputed amount. Buyers and farmers were to be subject to prison terms and fines for violations of the Act, or failures to correct violations after conviction.

It is interesting to note that the provisions of the Punjab Act were very different from the provisions for CF in the APMC Acts of other states. For example, the Gujarat and Haryana amended APMC Acts had bank guarantees from buyers/contracting agencies (5% and 15% of the value of the contracted produce respectively in the two states) to protect farmer interests in case of reneging by the company/buyer. The Haryana Act even prescribed that, wherever applicable, the contract price would not be less than the MSP of the crop.

There were many missing elements as well as some anomalies in the Punjab Act. For example, notified crops in the Act also included gur, shakkar and khandsari, which are generally not contract produced, as they are value-added products from sugarcane. It seemed the list of crops had been obtained from the state agricultural marketing board which it had notified under the APMC Act. But, all crops/produce on this list would not be amenable to being produced under CF (Singh, 2013b).

### **3.2 Punjab amendments to the CF Act, 2020**

Punjab's CF Act Amendment Bill, 2020 bars any contract agreement for wheat or paddy below the MSP announced by the Central government for that crop. It states: 'No sale or purchase of wheat or paddy shall be valid unless the price paid for such agricultural produce under a farming agreement is equal to, or greater than, the Minimum Support Price announced by the Central Government for that crop' (GoP, 2020a).

However, one would not expect any agency to undertake CF in these two crops in Punjab, or anywhere in India, unless it were basmati paddy or durum wheat. Punjab has some basmati CF but that may not be included under paddy (common rice), and the state does not grow any durum wheat. As discussed earlier, MSP is declared for 23 crops, but other crop farmers, or those trying to diversify under CF would not have the MSP protection of the Bills. In any case, this is a bad conception per se, as contract price should not be tied to any other price, especially state declared prices, but should be negotiated by the two parties. Furthermore, contracting is also about benefits other than price, such as yield, cost or quality of crop. Haryana had made MSP as the minimum contract price for contracting agencies in 2005 under its APMC Act but it was for all crops where MSP was applicable. Punjab should have learned from its neighbor (Singh, 2020b).

Similar to the Mandi Bypass Act amendment, the CF Act Amendment Bill makes a contract price below MSP or forcing a farmer for it an offence which shall be punishable with imprisonment for not less than three years and a fine. Again, the same criticism noted earlier applies. In both the amended Acts, the Punjab state government has created its right to levy cesses on notified or contract farmed agricultural produce bought, brought or sold by a corporate or trader and/or on the electronic platform, as the case may be, for trade and commerce in a trade area and this cess collection would go into a fund to run the market committee and for the welfare of farmers or other purposes related to welfare and promotion of agriculture or agriculturists and development of market infrastructure (Singh, 2020b). Essentially, this extends the APMC tax regime to all other transactions.

By contrast to Rajasthan's amendments, where the state government proposed to enforce stock limits in respect of any agricultural produce under contract agreement when there was a shortage of such produce in the state or the prices of such produce went beyond 25% of the maximum price prevailing in the market within two years before the passing of the order by the state government, Punjab has not provided for this in its amendments to the Central Act. The Rajasthan amendment also brings back CF dispute resolution to the APMC.

In sum, with its amendment bills, Punjab has asserted its federal rights under the constitution, ostensibly to protect farmer interests -- though not as comprehensively as Rajasthan. However, the amendments suffer from the lacunae and problematic provisions discussed in this section and the last. The result is likely to be ineffective protection of farmer interests, even if they withstand legal scrutiny by the courts. One might state even more strongly that Punjab's bills are bereft of any tangible benefits to the state's farmers, and do

not do any service to the sustainability of its farm sector and farmers (Singh, 2020b).

#### 4. Conclusions and Way Forward

There is no doubt that the two Union Acts are poorly designed as regulatory mechanisms. The aspects of farmer empowerment and protection mentioned in the title of the CF Act have been neglected in its contents. The APMC Bypass Act also has promotion and facilitation in its title, not regulation (MoAFW, 2020). Finally, the proof of any law is in its implementation, but as far as farmer interest protection is concerned, these Acts leave much to be desired in their basic design.

APMC markets need to be strengthened, as whatever new channels may become available for small and marginal farmers, the APMC markets -- public or private -- will remain the last resort for those farmers. On the other hand, they will be not be attractive to private players, who generally look for large volumes or high-quality produce, along with other advantages such as delivery by farmer or liberal payment terms.

One can argue that the system of *Arthiyas* in Punjab should be abolished by APMC Act amendment, with their place being taken by Farmer Producer Organisations (FPOs) such as Primary Agricultural Co-operative Societies (PACS), other Co-operatives, or Producer Companies, as is the case in states like Bihar, Madhya Pradesh, and even Uttar Pradesh now, where FCI and state agencies procure from village and local level without going to APMC mandis. Only then can small and marginal farmers hope to exercise choice of channels to benefit from direct purchase in trade area or from competition in the market. Of course, this requires better access to institutional credit for these small and marginal farmers to get them out of the interlocking of credit and produce markets practiced by the CAs in states like Punjab and Haryana, facilitated by public procurement and payments by public agencies to the Arthiya and not the farmer for her produce.

The way forward on the contested Acts of 2020 is either to leave the intra-state agri marketing reforms to the states in the spirit of co-operative federalism, as states are also eager to permit new channels for farmers and buyers, and compete among themselves in this regard, or to amend the Acts in consultation with the states and other stakeholders -- especially farmers -- to make these Acts deliver the regulatory oversight and farmer interest protection. In the case of the first option, the Union government can still legislate on interstate trade and commerce in farm produce under the Union list of the constitution, entry 42. Also, it can explore the provision of entry 7 of the concurrent list for legislating

on CF, as that is about contracts other than agricultural land, and CF is about crops/produce being grown under contract.

In the case of the amendment option, in order to win farmer confidence in CF, the land leasing provision should be removed from the definition of contract agreement in the Act and it should be clearly written in the Act that no recoveries other than from farm produce can be made from farmers, even if they default. Similarly, APMC Mandi Bypass Act should go beyond PAN cards for buyer registration, and also provide for mechanisms for counter party risk guarantees for farmers.

Better and more effective regulation is the first step to protect farmer interests and to ensure that they benefit from CF engagement. Further, since many Indian farmers are marginal or small, they cannot deal with large buyers on their own, even if they are brought under CF by some companies. Therefore, group contracts should be encouraged by policy incentives to make the mechanism inclusive and effective for farmers. The government can facilitate such contracts through credit and extension like in Thailand (Singh, 2005). Also, India now has thousands of Farmer Producer Companies (FPCs), which are business-like entities representing farmers. They can play a role in making CF deliver the objectives of farmer income enhancement by facilitating CF with smallholders, and also undertaking CF on their own (Singh and Singh, 2014; Singh, 2021). They should have been given more careful and detailed treatment in the new Acts.

Given the experience of the impacts of CF on natural resources in Punjab (Singh, 2007), there is also a need to provide for ecological concerns in CF regulation. This can be done by way of land-use planning based on soil depth, soil quality, land slope and suitable water availability. It is also important to understand previous land use and make it mandatory to follow appropriate crop rotations, if necessary (Singh, 2011).

Finally, it is important to realize that whatever expansion occurs for CF and direct purchases, India's large number of marginal and small farmers would need public and private wholesale markets to be reformed or newly set up to serve as an effective option for the large majority of them. These markets need to be reformed in terms of free licensing for better competition, e-payment of market fees, ensuring open auctions, better facilities, representation of producer companies in APLM management and even denotification of Commission Agents/*Arthiyas*. Madhya Pradesh took such steps in 1985, and that example deserves more analysis for designing current reforms in other states. The reform of APLM markets is important, as they serve as competitors to CF and 'direct' purchases practiced by food supermarkets and other buyers, and potentially

even to proposed private wholesale markets. With reform, they can help improve the terms offered by contracting agencies and food supermarkets to growers, as contract/direct prices are benchmarked to APLM prices and the CF Act, 2020 also takes this route to benchmarking contract prices, to some extent.

Finally, for facilitating direct payments to farmers by public agencies, the requirement of land records for large number of landless lease or landed lease farmers can be met if Punjab can legislate on the land leasing issue. It already has a draft model land leasing Bill which can be suitably modified to make it pro-small farmer (Singh, 2020). It would also have to amend its APLM Act, 2017 which provides for payments to farmers through the arhtiyas including a part even in cash. It should also move towards strengthening its co-operative credit structure and also encourage warehouse receipts system for farmers to manage their credit needs and not resorting to sale of produce immediately after harvest. The solutions to small farmers' marketing problems also lie outside just regulatory domain and in policy domains like credit and agro-infrastructure and their participation in value chains and networks for crop and enterprise diversification.

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