Reforming Agricultural Markets in India

A Tale of Two Model Acts

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The union Ministry of Agriculture and Farmers' Welfare had prescribed a model Agricultural Produce Marketing Committee Act in 2003. The state-level adoption of the act has been tardy and varied in terms of both the magnitude and content of agricultural market reforms. Yet, the ministry under the current central government has come up with another model act, the Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Act, 2017, supposedly an improvement over the 2003 act. Among other things, the provision that has grabbed much attention is the removal of contract farming from the APMC domain to a separate model act of Agricultural Produce and Livestock Contract Farming and Services (Promotion and Facilitation). Analysing these draft acts, the paper finds that both the model acts suffer from serious conceptual lacunae that have implications for their application and governance, and, consequently, for inclusive and sustainable agricultural development.

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The reform of agricultural markets is a long overdue policy issue in India. Like many other issues related to agriculture which is a state subject, this one too is caught in the battle between the union government and the state governments which have their own positions and compulsions on carrying out these market reforms. The first attempt at the reforms in agricultural markets was made by the union government with the design of a model Agricultural Produce Marketing Committee (APMC) Act in 2003 which made new market channels, such as direct purchase, private wholesale markets, and contract farming (CF), legal for farmers and buyers alike. The other related agricultural market reforms at the union government level have been the Warehouse Receipts Act, 2006 and the integrated food law (Food Safety and Standards Act, 2006) besides the amendment to the Companies Act, 2003 under which farmer producer companies were allowed to be set up (Singh 2016).

In the light of the changing global and local markets, agricultural market reforms in India are the pressing need of the hour. The emergence of new (organised) stakeholders in food and fibre markets such as domestic and foreign players in the wholesale cash 'n' carry segments, food retail supermarkets, online retailers/aggregators, processors, exporters, and farmer producer companies has led to new demands for quality and consistent supply on the existing market structures (APMCs) that have not been organised and managed, keeping these new players in mind. These wholesale markets have not changed adequately to meet new (modern retail and consumption) demand in India (unlike Europe where wholesalers supply to supermarkets as third-generation markets). This is so, as less than optimum policy attention has been paid to the wholesale agricultural produce markets, especially the fresh produce (wet) wholesale markets, both by the state as well as the APMCs themselves.

Though the existing APMC markets are increasingly being reduced in importance by CF and direct purchase arrangements with growers, they are still important for small growers as most of the time, small growers are not the preferred suppliers of the contracting/organised buying agencies (Singh 2013). This is not to say that the APMC markets (regulated or unregulated) are well functioning in most cases. In fact, even today, these markets are unable to deliver state-assured minimum support price to the farmers selling there despite the state agencies being mandated to procure from these markets. In some states like Chhattisgarh, charging commission from the farmers, instead of the buyers, is allowed, even in the

regulated markets, as per the state APMC Act (based on a field visit in April 2018). Further, fruit and vegetable (F&V) (wholesale or wet) markets are much less effectively regulated than grain markets even in so-called agriculturally advanced states. There are high marketing/transaction costs incurred by the seller farmer due to no/weak regulation of these. Finally, there is no/very little appreciation of produce quality even in markets for perishable. However, the problem of chemical residues in such produce has led some enterprising businesses to design and launch food washing machines for the consumers to remove the residues at their end. The lack of hygiene and convenience is another serious issue as there is very little planning which has gone into setting up of these markets and good agricultural marketing practices (unlike good agricultural practices in farm production sector) are almost unheard of in India.

After more than 14 years of struggle by the union Ministry of Agriculture and Farmers' Welfare (MoAFW) to get the model APMC Act 2003 accepted at the state level, the progress has been both tardy and varied, with some adopting it partially and others not adopting at all. Even then the MoAFW has come up with another model act, namely, the Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Act, 2017 (APLMA, 2017), supposedly more in tune with the changing times. It has also decided to take CF out of the APMC domain citing conflict of interest which is not letting the CF practice to spread as traders and commission agents oppose it due to their business getting adversely affected because of the spread of CF as the contracted produce does not have to come to the APMC mandi and does not need to pass through the mandi agents. Therefore, taking a cue from Punjab, a model Agricultural Produce and Livestock Contract Farming and Services (Promotion and Facilitation) Act, 2018 (hereafter APLCFSA, 2018) has been floated by the MoAFW which is on the lines of Punjab Contract Farming Act, 2013 which, however, was never operationalised (Singh 2013a). The new model APLCFSA, 2018 also mentions that one of the benefits of keeping CF and services out of the purview of the APMC would be that the buyers would not need to pay the market fee and commission charges resulting in a saving of 5%–10% of their transaction costs.

This paper examines these two model acts of agricultural marketing. Next sections highlight the major features of the model APLMA, 2017 and point out some critical conceptual issues with the definition and use of various terms in the act, alongside some of the governance issues at the APLM level and correspondingly the aspects of regulation and promotion in the new provisions on private wholesale markets, direct purchase channel, etc. The subsequent section focuses on the key aspects and lacunae in the model APLCFSA, 2018. The concluding section examines the inclusiveness and sustainability of the agricultural market development that these acts are expected to bring in.

Conceptual Issues in APLMA

That the model act reflects a major policy change is communicated through its title, APLM (Promotion and Facilitation) Act, 2017. The title seems to suggest that there is no need for regulations anymore and that farmers do not need protection in markets.

The model APLMA retains the 2003 act's provision of direct purchase from farmers (outside the APMC mandi). But, unlike the 2003 act, the 2017 draft does not consider CF within the ambit of the APMC. In fact, the 2017 union budget announced the enactment of a separate CF Act. However, the other non-starter provision in the 2003 act, the private wholesale markets (other than APMC markets), is retained in the new draft. Why this is not taken out of the purview of the APMC Act is not clear. Experience of last 15 years reveals the risk of even bigger conflict of interest in this than in CF. This is so because these private markets would compete directly with the APMC markets for buyers and sellers. Despite the act of 2003 not many private markets could come up as the local APMCs scuttled them by not allocating land, placing other conditions and even charging fees though many of them had relevant licences. In comparison, there were at least some incidents of CF in most states.

Additionally, the 2017 draft introduces e-trading and farmer–consumer market yard (FCMY, both by APMC and private parties), market sub-yard (different from sub-market yard), market of national importance (MNI), special commodity markets (SCM) for crops like F&V, flowers, cotton, medicinal and aromatic plants, and livestock markets like camel markets, and Farmer Producer Company (FPC) as new entity/mechanism and, therefore, expands the scope of agricultural markets and their regulation and rightly so. In fact, even a "street" can be declared a market under the new model act. A new category of ad hoc buyer has been included, but without any rationale being provided for such a provision. Also, a new concept of "overtrading" has been introduced which refers to a trader handling more than the amount of produce/livestock for which he has provided security or bank guarantee to the APLMC.

Section 4(viii) of the model act in the draft mentions an objective of the act as "to give freedom to the agriculturists to sell their produce across time and space." While this is a well-meaning statement, it can simultaneously raise the question that why such freedom is not needed for buyers while buying the farm produce? Further, some conceptual problems exist with the definition of commission agent (CA, or locally known as *arthiya*) and traders. CA is defined as one who buys or sells agricultural produce on behalf of his principal. This is conceptually wrong as CAs work on commission basis and cannot buy unless they are licensed and cannot hold/control such produce as they do not take title to goods by definition. In fact, a trader is also defined as an agent, which shows lack of basic conceptual clarity.

Unfortunately, the act still proposes that payments to the seller will be made through CA. It is not clear why the seller cannot be paid directly for their produce. Despite the issue of direct payments to farmers hanging fire for the last 15 years for Punjab, payment through CA is a regressive step in the act and perhaps reflects the political economy of agricultural markets in India where the CAs have acquired a political clout and the state governments are neither able nor willing to protect the

interests of the primary stakeholder, that is, farmers. The central agencies like the Food Corporation of India have been eager to pay directly to farmers while the state governments (for example, Punjab) have resisted. This is so due to the interlocking of agricultural markets with the CAs also engaged in informal moneylending to farmers and thereby wanting their repayment to be recovered through indirect/mediated payments to the farmers by the public and private buying agencies.

Another major change that APLMA, 2017 has brought in the domain of APMC is that the marketing of notified agricultural produce in its delineated market area will not be regulated by the act. Who then would regulate direct purchases outside the market yard by buyers like food supermarkets or traders or exporters? Even if market fee has to be collected on such produce (which is recommended to be one-fourth of the applicable market fee), how would that be recorded, monitored and verified? This is also contradictory to Section 4(1) of the act which declares the whole state as one unified market. If this unified market is still to be regulated for the benefit of the selling farmer per se, and fair play for all involved, who would do it? Because the APMC has no jurisdiction outside the principal market yard, sub-market yard and market sub-yard.

Further, in defining what livestock means (cows, buffaloes, bullocks, bulls, goat and sheep and includes poultry, fish and such other animals and products thereof specified in the schedule), the act does not deal with issues of quality, hygiene and food safety, which are pertinent for this sector of the agri-business economy both at home and globally. By clubbing the farm produce and livestock into one legislation, it also fails to recognise that the dynamics of these markets are very different in terms of perishability, frequency and nature of transactions.

Governance Issues of APLMA

All agricultural markets are for farmers and buyers who are the primary stakeholders in them. Surprisingly, there is no farmer representation in Market of National Importance (MNI) Executive Committee unlike the APLMC. Further, though there is so much policy focus on FPCs, there is no FPC representation in APLMC. Only cooperative marketing societies are given some space, despite the ministerial notification to all state governments to treat FPCs equal to cooperatives for all policy purposes. Again, though APLMC markets are mostly located at taluka level, there is no provision for a member from panchayat samiti. Only zilla parishad and gram panchayat find representation in APLMC. However, the first APLMC would have a representative from the local authority (panchayat samiti or zilla parishad or municipal committee or corporation). The first APLMC would have only one member from a cooperative marketing society besides 10 agriculturist members, two of whom would be the chair and the vice chair, respectively. Here again, representation from FPCs is missing. Further, the act states that the elected chair would hold office till the pleasure of the government/administration and this can cause damage to the democratic functioning of the APLMCs as they can be superseded anytime by political and bureaucratic stakeholders for reasons not in the interest of the APLMC and its real stakeholders.

Finally, the act is biased in favour of farmers allowing an agriculturist to be a member of a second APMC, too, if he has sold produce at least once in the last one year or five times in last five years. Why allow such dual membership when traders, CAs and others like weighmen and *hammals* are allowed only one APMC membership as a voter?

A maximum commission of 2% of the value of non-perishable produce and a maximum 4% on perishable produce value, including all expenses incurred by CA on storage and other services is proposed in the new act. On the other hand, the APLMC fee would not be more than 2% of the non-perishable produce value and not more than 1% of perishable produce value (MoAFW 2017, pp 57–58). It is difficult to understand why a lower fee on perishables is recommended when there is a higher CA commission on perishable produce. The market fee and commission between two types of produce are mutually inconsistent, without any explanation for this differentiation.

However, some of the processes specified can make market regulation more efficient. For instance, it is provided that the licence is to be granted/renewed/refused within 10 days of application and after that it would be granted/renewed automatically. Further, all existing licences would be automatically converted into single state licences after the new act and before that, they would be deemed to be statewide licences. The private wholesale market committee trade licences also qualify for conversion into statewide licences. But it also states that there would be no consideration of domicile, purchase/collection centre or minimal purchase requirement for renewal of licence. This sounds a bit strange as when the licence is granted by an APLMC, it should be renewed by that APLMC alone so that there is some record of renewal.

Even more problematic is the provision that the state director of agricultural marketing would give nationwide interstate trading licence. The question that arises from this provision is: How can they give it when the domain of such official is only that state in which they are serving? This is likely to cause problems as this undermines the autonomy of the state in terms of another state's official giving licences in its territory.

The model APLMA for the first time mandates the APLMC to take measures to prevent sale/purchase of produce below Minimum Support Price (MSP) in the APLM market, if applicable (MoAFW 2017: 40). But this is not a fair provision as the MSP is promised by the government, and not private trade. Therefore, forcing the private trade to buy produce at or above MSP or penalising them for not doing so, can kill the private markets for agricultural produce. Maharashtra which tried to bring this into its APLM Act had to withdraw this provision due to traders' protests.

The act also provides for payment to farmer seller (in APLM or direct purchase) on the same day. Otherwise, there could be seizure of the produce of buyer. This is a new and welcome provision as delayed payments can cause plenty of trouble for farmer sellers whether under APLM or direct sale to buyers. It also mentions at another place (MoAFW 2017: 56) that the buyer

would have to make an additional payment at the rate of 1% of the total produce value per day up to five days, for late payment, after which there could be a cancellation of the licence for one year. This provision is borrowed from the Rajasthan APMC Act.

There are also penalties for non-payment of fees/user charges but they are only up to five times or maximum of ₹10,000 which is not a very effective deterrent. The model act mentions that the APLMC will ensure that traders do not hoard produce but no measures to prevent it are specified. This, therefore, is a half-hearted provision as no implications are mentioned for the party involved or the APLMC.

The act also provides for the APLMC to publicise benefits of regulation so that farmers and buyers are not taken for a ride. That is likely to improve marketing efficiency and reduce cost and improve realisation for all stakeholders. For the first time, the model act provides for public–private partnership at the APLMC level. This is important as it provides for the engagement of the elected body with private entities for local-level infrastructure and facilities development, and their management, which can help professionalisation of APLMCs.

Private Markets and Direct Purchase

The act has a provision for the government to impose a ceiling on the user charges of the private market yard, perhaps for protecting the private players from being excessively charged and in turn be disincentivised to investment in such markets. Further, the private wholesale markets would contribute to a revolving Marketing Development Fund (MDF, maintained by director, marketing) from the user charges, at the same rate at which the traditional APMC markets do. Even private parties can set up FCMYs, but purchases must be in a specified limit to qualify as retail purchase. The private market player would pay a licence fee and bank guarantee for private market yard, or FCMY as prescribed. It would not charge any fees from one set of users, that is, farmer sellers. Farmers can sell directly to consumers in FCMY and warehouses, cold storages and other such structures would fall under market sub-yard category. No user charges can be levied on farmer sellers in direct purchase in declared market sub-yard or when direct purchase happens at farm level. However, it is not clear whether such markets are only for the perishables or for the non-perishables as well.

The food retail supermarkets, processors, exporters and bulk buyers (presumably including the farmer producer companies) are allowed to purchase directly from farmers. They are to pay 0.25% of applicable market fee on their wholesale purchases within seven days at the MDF. Further, Essential Commodities Act (ECA) would not apply on these players up to their annual capacity. Some states already feel that this fee is too low to maintain physical marketing infrastructure used by such buyers such as roads, bridges and the like. They are even opposed to the one-time levy of market fee on the ground that the same buyer/trader is repeatedly using services of the market provider/market infrastructure and thereby should pay the fee during each usage.

The F&V sold outside market yards are exempted from market fee and are not to be regulated under the 2017 act. A legitimate question which arises is: why not extend the same treatment to non-perishables? Most disappointingly, the act ignores the important and vexed issue of the role of arthiyas (commission agents) in the APMCs and maintains them as central agents in the system despite good practices like abolition of CAs in Madhya Pradesh in 1985.

The APLCFS Act, 2018

The model Contract Farming and Services Act, 2018 uses the concept of family farms which is not really relevant in the Indian context. Eighty six per cent farms are marginal or small (less than 2 hectares) and have been producing commercially for decades. How can they be compared with family farms in the United States or Europe where the proportion of such farms is smaller but their average size larger?

In fact, the act uses operational efficiency of small (calling them "handkerchief size"!) farms as the reason for promoting CF. But, it is difficult to understand how the scale of farm operation can change due to CF, as the only way to achieve some semblance of scale under CF is to have group contracts which, unfortunately, the act does not even mention. The act provides for a CF facilitation group at village/panchayat level to facilitate contract arrangement and its delivery for the two parties. It is surprising that it could think of this group, but not the much-needed group contracts, when group contracts are already in practice in India, for instance, in Gujarat for potato.

In fact, a group contract is the most desirable provision in the Indian context and in any smallholder context as there is provision for group certification under Global GAP as well as for organic and fair trade, and there are many exporters in India in crops like basmati rice, grapes and baby corn who work with groups of farmers for group certification but have individual contracts with each farmer. This is where group CF had a role to play. Even Thailand with larger average landholding size than India had used the group contracts officially and formally as a part of its four-sector cooperation plan for agricultural development. In Thailand, CF was the central mechanism and the state's extension and low-cost credit were two important components of the four-sector plan along with private contracting agencies and farmer groups (Singh 2005).

Further, it is stated that crop insurance is to be a part of CF arrangement, which is much needed to reduce farmer's production risk in the absence of any other mechanism, especially when high value crops are much more prone to risk. Even price or market-linked insurance provided by any public agency would be applicable to the contracted produce. Even multipartite agreements are allowed under the act which is the name of the game increasingly as individual agencies cannot afford to provide all services and take risk of default. These are good aspects of the act.

The act also introduces a new "service contract" which refers to the "agreement between the farmers/FPO and the services contract sponsor, wherein the former supplies the produce and the latter provides post-harvest management and marketing services such as storage, primary value addition, marketing linkage to organised retailers, processors, exporters, future/

option trading, etc" (MoAFW 2018: 6). This is completely irrelevant in this act as service provision can be a part of the CF arrangement itself. Perhaps what is being referred to here is the agro-input and other professional service agencies which undertake CF for other buyers (and not for themselves). This has been the practice in India across many crops, in many states, where agro input companies have organised CF projects for processors and exporters under the previous amended APMC Acts (Singh 2009). There was no need to separate out this set of players as they also undertake CF activity like any other players.

Regulation versus Facilitation

Like the APLMA, 2017, the APLCFSA, 2018 also bids goodbye to regulation as an objective, reflected in its title, too, APLCFS (Promotion and Facilitation) Act. In fact, this model act does not even have the mandatory provisions of the CF agreement formed an essential part of the 2003 model act (APMC Model Act 2003).

In a context when global and local agencies are already looking at responsible CF agreements (FAO and IISD 2018), this provision of the new act suggests that it is left to the parties of the contract to decide on all aspects of the agreement. But, it goes on to state that the sponsor shall make all arrangements for purchase and provide materials required for filling and weighing/measuring of the produce, in advance when the produce is to be taken by the producer for delivery to the sponsor at the agreed place. When all other terms and conditions have been left for the two parties to decide upon mutually, the reason for this mandate, relating to the time and place of delivery, is not clear.

The payment mode specified by the act is that of payment through electronic clearance. Again, two-thirds of the value of the payment is to be made at the time of delivery itself, while the rest is after the assessment of quality. If assessment of quality is pending, how can the buyer make any payment for the produce?

That the committee has gone overboard in facilitating CF for the benefit of private agencies as against the farmer interest is also clear. The act has provisions for the producer leasing out agricultural land to the sponsor—leasee, which is not legally inconsistent as of now (MoAFW 2018: 26). But, how can a committee mandated to legislate on CF step into the domain of land leasing issues when there is a separate model act for land leasing by the NITI Aayog and also the state level laws on land leasing? This clearly would allow sponsors' full access to farmland, not just through CF, but also encourage corporate farming disguised as CF.

For the first time, under the model act, the CF (promotion and facilitation) board is seen as a guide and umpire to popularise the CF crops in domestic and export markets under the brand of contract farmed produce. It is difficult to see how a regulatory body can engage in promotion of this mechanism, when its primary role should be conflict resolution and monitoring of CF projects. This is especially surprising as the title of the act does not even mention regulation.

In fact, it is stated that the CF board would also promote farmer producer organisations (FPOs), including producer companies, and would frame quality/grade standards. It is even mentioned that the board may also represent in the meetings/workshops of farmers and FPOs organised by sponsors to facilitate them to understand the contracts, the relevant law and other things incidental thereto under this act. This is what the shift from regulation to facilitation means. It is definitely not desirable for a regulatory agency to do so—why should a state-funded body promote markets for private agencies, especially when they are supposed to explore their own markets and invest in them? Once a regulatory body becomes a part of the activities of the party (CF sponsor) that is supposed to be regulated, there is a potential conflict of interest.

Antithesis of Contract Farming

The act also exempts CF buyers from any APLM fee by default which was provided for in the previous model act (2003) as well, but creates a new CF board fund with 0.3% of value of contracted produce charged as facilitation fee from CF sponsor which is capped at 0.5% of the value of contracted produce, besides the grants and sums that it receives from other sources. This fee can also be waived initially as an incentive to promote CF. However, this is bringing back market fee in another form, though the argument was that the CF agencies need not pay the market fee as they do not use mandi facilities. So, is this fee to be paid because the board would promote contract farmed produce for the sponsors in domestic and export markets?

More surprising is the provision which states that the board would ensure buying of entire pre-agreed produce of grower by the contracting agency which goes against the very logic of quality promotion and standards in the market. Though it

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sounds good to protect producer interest this way, it would be quite problematic to ensure this as when a contract specifies quality standards beforehand, why should a buyer buy lower quality produce which may not be needed by it? In practice, contracting agencies do buy some of the lower quality produce as part of the agreement to give a market outlet for the farmers, but it is always a source of conflict as the prices offered for this rejected or lower quality produce (sometimes on flimsy grounds) are very low or nominal (Singh 2008).

More surprisingly, the act links contract price to market price which is the anti-thesis of CF philosophy as if the agency has to go by market prices which may not be efficiently discovered, then why should it go for CF? The reason for undertaking CF is that the desired quality of produce and at reasonable cost are not available to the agency in the open market. In fact, Haryana, under the 2003 model act, had linked the contract price to the MSP whichever crop it was relevant for, and that was seen as an undesirable step as contract price cannot be tied to any other price mandatorily as the costs and yields can also be grounds for farmers to get into CF, not just price.

The act has so many inadequacies in terms of its provisions for the diversity of the agricultural sector in India. For example, CF sponsor can be a person, but what about FPOs? Surprisingly, the FPOs/FPCs are given the status of only a producer which can contract with sponsors on behalf of the producers, and not as contracting agencies which could also offer contracts to their members and non-members. Why can they not undertake CF with members and even non-members? This again shows that the act lacks innovative thinking. In fact, one way to make FPOs/FPCs more vibrant business entities is to bring contractual relations with their members in a value chain driven world so that they can attend to markets more competitively with reliable supplies and can contain opportunistic behaviour of their members. While buying agencies like processors, exporters and supermarkets help create new value, it is FPOs that help capture a part of the value so created for their members (Gersch 2018).

Conclusions

The above discussion of the various provisions of the draft APLM and APLCFS acts shows that the acts are meant to open up the agricultural markets without adequate safeguards for farmers who are the primary stakeholders of the system. The very exclusion of the alternate channels from the APLMC domain also shows that the reforms are stuck in the middle due to their political economy dimensions and the inability and unwillingness of the state governments to bell the cat in most cases. The various lacunae of the acts show that they are prepared in a hurry without much discussion and debate and would not serve the purpose of making APLM markets and CF more efficient and inclusive (Singh 2016a). That is rather unfortunate as the APLM markets are the markets of the last resort for small and marginal farmers in most of India and CF is a much-needed vehicle for the diversification of crops, technologies and markets for farmers.

More importantly, there is a need to promote FPCs (which already number a few thousand across India) to organise/encourage market oriented and business-like cooperatives (new generation cooperatives) which can deal with CF agencies and direct buyers besides helping their members produce as per market demand. The model APLM gives this mandate to the CFS Board but it is doubtful whether such a regulatory agency can really do this. This should be done by various agencies involved in the farm and agricultural market sectors at their own levels and the union and state governments can encourage them with incentives and policies.

Finally, it is important to realise that whatever expansion CF and direct purchase may witness, India's large mass of marginal and small farmers would need public and private wholesale markets, which need to be reformed and set up respectively as they are the last resort for a large majority of them. These markets need to be reformed in terms of free licencing for better competition, e-payment of market fee, ensuring open auction, better facilities, representation of producer companies in APLM management and even denotification of CAs/arthiyas as Madhya Pradesh did it in 1985, though not widely known and discussed even today. The reform of APLM markets is important as they serve as competitors to CF and "direct" buyers, and/or proposed private wholesale markets, and thereby help improve the terms offered by food supermarkets to growers, as contract/direct prices are unfortunately benchmarked to APLM prices and the act also takes this route to contract prices by linking them to MSP.

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