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**JOURNAL**

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An Inquiry into the Implications of Repeal of Bihar APMC Law**

by Gopal Krishna

**Vol 18/1  
2023**



## **Journey of Agricultural Produce Market Committee Law in Bihar: An Inquiry into the Implications of Repeal of Bihar APMC Law**

By Gopal Krishna\*

### **ABSTRACT**

This paper examines the context of the establishment of the Agricultural Produce Market Commission by the Bihar government through the enactment of the Agricultural Produce Markets Act, 1960 and the reasons for its repeal in 2006. It looks at the Act's constitutionality and the unconstitutionality of its repeal in light of the orders by the Supreme Court and the Patna High Court, as well as the Indian Constitution. Agriculture is a state subject under the Constitution; the paper examines the central Bypass APMC Act, 2020 and its repeal. The paper undertakes a comparative study to trace the impact on agricultural marketing infrastructure and farmers' plight. The paper draws inferences from comparing APMC with government schools and hospitals created for economic justice, equity, and equality.

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## Introduction

Three farm laws, including one bypassing the government-established agricultural produce market committee (APMC) law<sup>1</sup>, were promulgated in June 2020 and subsequently enacted amidst bitter protests in the Indian Parliament. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, was enacted in response to the fifteen-year-old Bihar Agriculture Produce Market (Repeal) Act, 2006, which repealed the Bihar Agriculture Produce Markets Act, 1960. The farmers referred to it as Bypass APMC Act. The central Bypass APMC Law prepared the way for the despotic execution of judicial function against the doctrine of separation of powers.

The original APMC Law was enacted in response to the 1855-1928 country-wide farmers' movement, particularly in Bihar, Bengal, Maharashtra, Kerala, Punjab, Uttar Pradesh, and Gujarat, and on the recommendations of the Royal Commission on Agriculture 1928. The Commission stated in its report, "The most hopeful solution to lie in the improvement of communications and the establishment of a regulated market".<sup>2</sup> The Bihar Market and Dealers Bill 1939 was introduced afterwards but did not pass. It was re-introduced in 1944—however, the decision to introduce it after World War II was made.

The Statement of Objects and Reasons of the Bihar Agricultural Produce Markets Bill, 1960, acknowledged that certain States had already passed such legislation. As a result, "conditions of agricultural marketing in those States have improved appreciably".<sup>3</sup> The law was an outcome of the nationwide farmers' protest led by legends like Swami Sahajanand Saraswati and Sir Chhotu Ram, resulting in this law's passage. It became the Bihar Agricultural Produce Markets Act, 1960, enacted to "enable better control of purchasing and selling of agricultural pro-

duce and the formation of markets for agricultural output in the state of Bihar".

## Background

In the pre-Agricultural Produce Market Committee (APMC) law days, rampant price misinformation and arbitrage ruled the roost. The Statement of Objects and Reasons of the Bihar APMC law of 1960 highlighted the significance of well-organised agricultural and allied commodities markets. According to the recommendations of the Planning Commission of India on regulating all important wholesale markets, the legislation was proposed to give relief to agriculturists and farmers dependent on the mercy of middlemen to whom they were obliged to sell the produce at the end of the harvesting season. The law considered the role of *Arhatiyas* (commission agents) and wholesale buyers who formed a "secret agreement to exploit the unwary agriculturists". They prevented the farmers "from having correct information as to the current sale price of agricultural produce", resulting in a situation where "the agriculturist seldom gets a fair share of the price paid by the consumer". The regulated markets secure "better prices, fair weighment and freedom from illegal deductions" for the agriculturists.<sup>4</sup>

APMCs were established to ensure fair transactions and price discovery. They functioned as an infrastructure for auctions and storage out of the buyers' cess. Several APMC-*mandis* used the funds to create rural marketing infrastructure. It was democratic and decentralised by design, with physical auctions as the basis of price discovery and licensing of traders as a way to ensure payment.

The constitutionality of Bihar APMC law was questioned repeatedly in the courts. The Patna High Court and the Supreme Court ruled that the State legislature has the constitutional authority to enact laws to regulate the agricultural market. The Bihar Agriculture Produce Markets (Repeal) Act of 2006, which repealed the 1960

<sup>1</sup> The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.

<sup>2</sup> *MCVSA Nadar v State of Madras (1959) Supreme Court, AIR SC 300, 4* <<https://main.sci.gov.in/judgment/judis/477.pdf>>.

<sup>3</sup> *Op.cit*, The 1960 Bill.

<sup>4</sup> Ramesh Kumar Agrawal, *Commentaries on The Bihar Agricultural Produce Markets Act & Rules (Malhotra Books 1995)*1. S.

law, was also declared constitutional by the High Court. It ruled that the State had enacted the repeal law “to give incentive to private and co-operative markets for trading on mutual contract basis directly from the farmers”.<sup>5</sup> The Court answered the employees' pleas while disregarding the farmers' requests.

After roughly ten years, a Supreme Court appeal was dismissed without substantive hearing or consideration of the petitioners' arguments in general or the farmers' appeal in particular.<sup>6</sup> The official report of the Supreme Court states that the “Counsel for Appellants has not filed a statement of the case as per Hon'ble Judge-in-chamber's order dated 24th October, 2013 in all the matters”.<sup>7</sup> The appellants' lawyers did not diligently pursue the appeals. According to the court's office report, the respondents' attorneys never showed up. Justices Arun Mishra and Navin Sinha's bench dismissed the appeals on April 11, 2019, stating:

In the facts and circumstances of the case, we find no ground to interfere with the impugned order(s) passed by the High Court, that too in the cases filed at the instance of the employees, where they have already been absorbed. Consequently, we are not inclined to interfere in the matter. The appeals and the Special Leave Petition are, accordingly, dismissed. Pending interlocutory application(s), if any, is/are disposed of.<sup>8</sup>

The ruling discloses that the Division Bench of the Supreme Court did not address the issue of

the constitutionality of the Bihar APMC repeal law, 2006, enacted without complying with the constitutional provision under proviso to Article 304(b). The President's assent was not obtained, which was blatantly unconstitutional.

The Supreme Court debated the meaning of the proviso to Article 304(b) of the Constitution in *Koteswar Vittal Kamath v K. Rangappa Baliga & Co.* (1969). It states: “Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President”.<sup>9</sup> The proviso's language cannot be understood, according to the Court, in the way that the High Court did without violating the rules of construction. If both terms “introduced” and “moved” apply to the Bill, it must logically follow that the terms also refer to another term, “amendment”.<sup>10</sup> When the Bihar Agricultural Produce Markets (Validation) Act, 1982 was enacted, repealing the Bihar Agricultural Produce Markets (Validation) Second Ordinance, 1982, and incorporating it into the Bihar Agricultural Produce Markets Act, 1960, the prior assent of the President of India was obtained. However, when the Bihar Agriculture Produce Market (Repeal) Act, 2006, was enacted, the assent of the President was not taken as per the proviso to Article 304 (b). The non-obstante (notwithstanding anything contained) clause in Article 304 (b) has significance even with Article 303, which forbids Parliament and State Legislatures from passing laws on trade and commerce that discriminate against or favour one or more States. Article 304 (b) lifts the prohibition imposed by Article 303, subject to the limitation specified. The Bihar Agriculture Produce Market (Repealing) Act, 2006, was enacted without considering this limitation. The Courts have not addressed this issue.

A division bench of Justices Ravindra S. Bhat and L. Nageswar Rao quoted the Koteswar Vittal Kamath case observations in *Lalit Kumar Jain v Union of India* (2021) with the agreement.<sup>11</sup> These observations of the Supreme Court are germane to the order issued by the

<sup>5</sup> Bihar Agriculture Marketing Board Employees Association v State of Bihar, Patna High Court (2008) (2) PLJR.

<sup>6</sup> In Bihar Rajya Ardh Sarkari Nikay Padadhikari Sangh v State of Bihar, Civil Appeal No. 4677 of 2008, Sachchidanand Kumar v State of Bihar, Civil Appeal No. 5154 of 2008, Bihar State Agricultural Produce Marketing Committee Employees Union v Union of India, Civil Appeal No. 5777 of 2008 and Krishna Nand Singh v Union of India, Special Leave Petition (Civil) No. 6319 of 2009 and Bihar Rajya Ardh Sarkari Nikay Padadhikari Sangh v State of Bihar. The order of April 11, 2019 in Civil Appeal No. 4677 of 2008 reveals that all the cases were dismissed together.

<sup>7</sup> Office Report, Bihar State Agricultural Produce Marketing Committee Employees Union v Union of India, Civil Appeal No. 5777 of 2008 December 5, 2018; Office Report, Bihar Rajya Ardh Sarkari Nikay Padadhikari Sangh v State of Bihar, Supreme Court of India, 8 January 2019, 2.

<sup>8</sup> Civil Appeal No. 4677 of 2008 in Bihar Rajya Ardh Sarkari Nikay Padadhikari Sangh v State of Bihar with Civil Appeal No. 5154 of 2008, Civil Appeal No. 5777 of 2008 and Special Leave Petition (Civil) No. 6319 of 2009, Supreme Court of India, 1-2.

<sup>9</sup> Constitution of India, Article 304 (b).

<sup>10</sup> Cited in *Rajendra K Bhutta v Maharashtra Housing and Area Development Authority*, Supreme Court of India, 19 February, 2020, 18, Civil Appeal No. 12248 of 2018.

Patna High Court on February 14, 2008, in *Bihar Agriculture Marketing Board Employees Union v State of Bihar and Jaipal Singh v Governor of Bihar and Sachidanand Kuar v Union of India*.<sup>12</sup> A five-judge Supreme Court Constitution Bench ruled in *Rai Ramkrishna v State of Bihar* (1963) that “the test of reasonableness prescribed by Article 304(b) is justiciable”.<sup>13</sup> The Chief Justice-led Bench in *Buxa Dooars Tea Company Ltd. v State of West Bengal* (1989) pronounced a West Bengal Act to be “unconstitutional and void and cannot be given effect to” as the President’s assent was not granted under the proviso to Article 304(b).<sup>14</sup> It stands to reason that the State Legislature’s adoption of the Bihar APMC Repeal Act without the President’s assent is similarly unlawful.

The Bench, headed by Supreme Court Justice Arun Mishra too, did not address the farmers’ requests in the appeals filed by Sachidanand Kuar and Krishna Nand Singh. The appeals were dismissed without reasoned adjudication, as evidenced by the order this Bench issued in 2019.

## Relevance of Stay on Central Bypass APMC Act

In a significant development, “the implementation of the three farm laws—(1)the Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; (2) the Essential Commodities (Amendment) Act, 2020; and (3) the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020”<sup>15</sup>—was stayed on January 12, 2021, by the three-judge Bench of the Supreme Court headed by the 47th Chief Justice of India. The

subject matter of the Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act 2020 pertained to the bypassing of the Bihar APMC Act. A new “trade area” outside the APMC market yards/sub-yards was established by the Bypass APMC Law of 2020, which the Court halted, allowing any buyer with a Permanent Account Number (PAN) to purchase directly from farmer sellers. The State governments lost their power to impose taxes on such transactions.

The proponents of this proposed central Bypass APMC law claimed that it would lower the cost of buying agricultural produce, leading to higher prices for farmers. However, it is not clear that this would happen in practice. Buyers who can purchase agricultural products at lower costs may not necessarily pass on those savings to the farmer sellers. The claim of choice to farmers is misleading as most farm producers, except in Punjab and Haryana, do not sell through APMCs.<sup>16</sup> Additionally, the law would allow anyone with a PAN to buy, leading to a surge in hoarding. The harmful impact of hoarding has been a topic of numerous old Indian movies. Under the APMC law, the APMC resolves disputes concerning farmers’ payments. In order to maintain market stability, the Model State Agricultural Produce Marketing (Development & Regulation) Act, 2003 empowered the Marketing Committee to ensure that traders do not buy agricultural produce beyond their capacity and avoid risk to sellers in disposing of the produce; and grant licences after obtaining security amount as bank guarantee depending on the buyers’ capacities. However, the central Bypass APMC law ignored valuable institutional memory. The Court’s stay order on the repeal of the central bypass APMC law, and the Parliament’s subsequent repeal of the law, appears to vindicate the prayers against the repeal before the higher judiciary.

The “Bihar experiment” to introduce open markets in agriculture through the repeal has failed to draw private investments or increase farmers’ prices and income. The bill’s proponents, in-

<sup>11</sup> Lalit Kumar Jain v Union of India, Supreme Court of India, 21 May 2021, 65 Transferred Case (Civil) No. 245/2020.

<sup>12</sup> Bihar Agriculture Marketing Board Employees Union v State of Bihar, Patna High Court, para 4, 2008 (2) PLJR 274.414 February 2008.

<sup>13</sup> Rai Ramkrishna v State of Bihar, Supreme Court of India, 1963 AIR 1667, 1964 SCR (1) 897, 11 February, 1963.

<sup>14</sup> Supreme Court of India, para 705, AIR 2015, 1989 SCR (3) 293, 12 May, 1989.

<sup>15</sup> Rakesh Vaishnav v Union of India (2020) Writ Petition No. 1118 of 2020 Supreme Court, Order of 12 January 2021.

<sup>16</sup> Barun S Mitra, “About Half of Farm Produce Sold Outside APMCs Anyway. But Modi Govt Wants One-size-fits-all” The Print (3 December 2020) <<https://theprint.in/opinion/about-half-of-farm-produce-sold-outside-apmcs-anyway-but-modi-govt-wants-one-size-fits-all/556413/>>.

cluding the World Bank, predicted it as the start of a new market-driven agricultural revolution. Such claims were misplaced. The Bihar APMC Repeal law was criticised in 2019 by the National Council of Applied Economic Research (NCAER) for dismantling institutions established under the Bihar APMC law. The study found that “Under these situations, farmers are left to the mercy of traders who unscrupulously fix a lower price for agricultural products that they buy from farmers. Inadequate market facilities and institutional arrangements are responsible for low price realisation and instability in prices”.<sup>17</sup> It is evident that repealing the APMC law was not a good idea. Bihar is the only state in India to have abolished the APMC law to encourage private investment in agricultural marketing infrastructure. However, there is no such infrastructure in place.<sup>18</sup>

Conversely, the Bihar Agriculture Department informed the Union Ministry of Agriculture in May 2020 that Bihar suffers from infrastructural deficiency.<sup>19</sup> The central bypass APMC Act, the Farmers' Produce Trade and Commerce Ordinance, 2020, and the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act were promulgated in June 2020 and September 2020, respectively, without this crucial insight into consideration. It has now been repealed in response to one of the demands of *Samyukt Kisan Marcha* (Joint Farmers Front).

## Decoding Central and State Bypass of APMC Laws

The primary objective of the Bihar APMC law was to establish marketing committees to oversee regulated markets and fully represent producers, dealers, local authorities, and the

government. Other objectives included prohibiting the exploitation of market participants, regulating market charges, and providing reliable market information, besides open auction sales. The following cities had notified market committee areas prior to the repeal of the APMC law: Patna, Nalanda, Gaya, Nawada, Rohtas, Bhojpur, Aurangabad, Bhagalpur, Munger, Begusarai, Darbhanga, Madhubani, Samastipur, Purnea, Saharsa, Katihar, Muzaffarpur, Sitamarhi, Vaishali, East Champaran, West Champaran, Saran, Gopalganj and Siwan. According to Schedule II, Rule 94 of the Bihar Agricultural Produce Market Rules, 1975, there were 12 categories of agricultural produce processed in the notified market area that was permitted to pass through the main market or sub-market yards but was not to be sold elsewhere.

All cereals, pulses, oil seeds, vegetable oils, fruits, vegetables, fibres, animal and animal husbandry products, condiments, spices, grass, fodder, and narcotics were included in 11 categories. Sugarcane, lac, oil cakes, jute seed, mesta seed, isabgol, makhana, mahua, myrcobolan, rab, bidi leaves, bamboo, wool, dhoop wood, sugar candy, mango pickle, harre, bahera, honey, toddy, gond, kath, khandsari, and molasses made the twelfth category. Under the law, the market committee had to be informed of the agricultural produce resold in the market area.

Concerning the Bihar APMC law, the Patna High Court ruled in 1965 that regulating markets and market practices need more emphasis for primary producers. “It has been observed that in the States in which regulated markets have not been established to any extent, the cultivator is in a situation of much greater disadvantage than elsewhere”.<sup>20</sup> The Court observed that “It is also manifest that the impugned provisions of the Bihar Act are also similar in material respects to those of the Madras Act”. Therefore the reasoning of the Supreme Court decision in the Nadar case “also governs the present case. It follows, therefore, that the provisions of the Bihar Agricultural Produce Markets Act with regard to the declaration of the market area must be held to be *intra vires* and constitutional”.<sup>21</sup>

<sup>17</sup> National Council of Applied Economic Research, Study on Agricultural Diagnostics for the State of Bihar in India (2019) <<https://www.ncaer.org/project/agricultural-diagnostic-for-bihar-state-of-india>>.

<sup>18</sup> Sukhpal Singh, “Food Security and Markets: Understanding the Protests over India’s Changing Social Contract with Farmers” The Hindu Centre (15 March 2021) <<https://www.thehinducentre.com/the-arena/current-issues/article34060554.ece>>.

<sup>19</sup> Letter of N Saravana Kumar, Secretary, Department of Agriculture, Bihar to Srabani Guha, Advisor, Ministry of Agriculture and Farmers Welfare, Government of India, Letter No.-Mo-115/19, 2184, 22 May 2020.

<sup>20</sup> Thakur Prasad Gupta v State of Bihar (1965) AIR Patna High Court 267.

The Court approved the Tamil Nadu Agricultural Produce Markets Act, 1959, which made provisions “for the better regulation of buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce in the State”.<sup>22</sup> It endorsed better regulation of buying and selling agricultural produce in Bihar.

## Flood of Amendments

In 1972, the Bihar APMC law of 1960 was first amended. It involved raising market fees and a new chapter IV-A about creating the Bihar State Agricultural Marketing Board through an Ordinance effective in 1974. Ordinance No. 41, dated January 1, 1974, made exhaustive amendments to the law. Bihar government issued several ordinances in 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, and 1982 to alter the APMC law.<sup>23</sup> The changes remained in effect until the ordinance of January 24, 1982. The government kept these laws as ordinances to escape legislative scrutiny.

On July 22, 1974, the Bihar Agricultural Produce Markets, 1974 (Third Amendment) Ordinance was referred to the State Assembly's Joint Select Committee for a report on the amendment bill. On April 5, 1982, the Committee delivered its findings to the Legislative Council and the amending bill. On the same day, the Council passed the bill. The State Assembly passed it on April 10th, 1982. The Bihar Agricultural Produce Markets (Amendment) Act, 1974 was published on April 30, 1982, following the President of India's assent. The Bihar Agricultural Produce Markets (Validation) Act, 1982, enacted on August 7, 1982, further amended this law.

This law was to validate the acts of omission about “the non-publication of the notification nos. 14841 dated the 27th October, 1967, and 2028, dated the 12th February, 1972 in the Bi-

har Gazette, the orders made for regulating the market on such items, and market-fees levied, collected or to be levied and collected shall not be illegal and invalid merely on the ground, and notwithstanding anything contained to the contrary in any judgment, decree or order of any court the Schedule of notification no. 14841, dated the 27th October, 1967 and 2028, dated the 12th February 1972, shall always be deemed valid and effective and all levies made or market fees collected shall be deemed to have been validly realised, taken, done and issued as if the provisions of this Act were in force at all material times when such realisation was made, action taken, things done. Orders issued and no suit or proceeding shall be maintainable for a refund of the levies made on fee collected or actions taken under those notifications”.<sup>24</sup> These acts of omission were legitimatised by Bihar Agricultural Produce Markets (Validation) Second Ordinance, 1982, prior to this law.

The amended law, with over 60 Sections, four forms, and a schedule on “agricultural produce” list, replaced the ordinances and expanded their scope. According to the Statement of Objects and Reasons of the Amendment Act, the Government of Bihar implemented it following the World Bank deal to create 50 agricultural markets. Under this agreement, the 1982 revision included a clause establishing the Bihar State Agricultural Marketing Board. A new Section 51 was added, providing that “the State Government may delegate any of its powers or functions under this Act to the Board or any officer of the State Government...”.<sup>25</sup> The amendment also modified the definition of “agricultural produce” in the APMC law to include “all produce whether processed or non-processed, manufactured or not, of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture, and includes livestock or poultry as specified in the Schedule”.<sup>26</sup> The amendment also stated that “the State Government may give general or particular instructions on policy concerns to the Board, as it considers appropriate, with a view to implementing the provisions of this Act”. These provisions were contested for

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<sup>21</sup> *ibid.*

<sup>22</sup> The expression “State of Madras” has been substituted by the expression”. State of Tamil Nadu adaptation of Laws Order, 1969.

<sup>23</sup> These ordinances were- Ordinance Nos. 88 and 124 of 1974; 40, 90, 133 and 186 of 1975; 39, 116 and 200 of 1976; 47, 96, 165, 199 and 268 of 1977; 18 and 100 of 1978; 42, 61 and 144 of 1979; 17, 60 and 138 of 1980; 39, 126 and 168 of 1981; 24 of 1982.

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<sup>24</sup> The Bihar Agricultural Produce Markets (Validation) Act, 1982.

<sup>25</sup> Agrawal (n 4) 2.

<sup>26</sup> *ibid.*

undue delegation, but the High Court upheld their legality, “There is no excessive delegation of power”.<sup>27</sup> The State frequently altered the original law's provisions through ordinances and subordinate legislations.

Earlier, Section 52 of the Bihar APMC law of 1960, empowering the State to make rules and by-laws, was used to create the Bihar Agricultural Produce Market Rules, 1975. In its verdict in the matter of constitutionality of the Bihar APMC law, the Patna High Court observed that “As such the State Legislature is competent to enact these provisions under Entry 28 of List II of the Seventh Schedule”.<sup>28</sup> 28 writ petitions were filed against the latter and were dismissed by The High Court which upheld the provisions as constitutional.<sup>29</sup> The 1975 provisions included 23 Forms, 3 schedules, and 134 rules, repealing the Bihar Agricultural Produce Market Rules, 1962. Three provisions of the APMC law—Sections 18, 27, and 30—were modified by the Bihar Agricultural Produce Market (Amendment) Ordinance enacted in 1987 and implemented in 1988. The marketing committee's authority and responsibilities outlined in Section 18 included establishing the market area, acting as a mediator, arbitrator, and surveyor in disputes, and issuing licenses to traders, brokers, weighmen, measurers, surveyors, warehousemen, and other persons. Section 27 dealt with the marketing committee's authority to charge a fee of one percent on the sale or purchase of agricultural products within its jurisdiction as a service fee. Section 30 addressed the use of the marketing committee fund for around thirteen objectives, including market site acquisition.

Bihar Agricultural Produce Markets (Amendment) Act of 1992, added a new provision : Every Market Committee shall out of its fund contribute to the State Government fund such a percentage of its income derived from license fees and market fees as may be prescribed by Rules from time to time by the State

Government.<sup>30</sup> The statement of purposes and justifications for the amendment Act stated that this provision addressed challenges with the state money in challenging times. The provision remained even as the State recovered.

The by-laws issued under Section 53 of the law by the eighteen-member marketing committee with the permission of the Bihar Agricultural Marketing Board were not published in the official gazette, as per *Matadin Agrawal v State of Bihar* (1989). Resultantly, it never came into effect. The Board was established following Section 33 A of the amended law. This blatant absence violates Section 53 of the APMC Law, which prohibits the abuse of the authority to adopt by-laws.

The 1993 Bihar Agricultural Produce Markets (Amendment) Act gave the State government new powers stating : Notwithstanding any judgment, decree or order of any Court to the contrary any market fee levied and collected shall be deemed to be valid as if such levy and collection was made under the provisions of this Act as amended by this Act and notification no. 730, dated 2nd May, 1977 shall be deemed never to have been issued and no suit or other legal proceedings shall be maintained or contained in any court for the refund of the fee collected under the provisions of this Act and no Court shall entertain any proceedings challenging the fee recovered or the continued levy and recovery of the fee merely on the ground that liability has ceased on the issuing of the notification no. 730, dated 2nd May, 1977.<sup>31</sup> This 1993 amendment's clause seems to attempt to present a *fait accompli* to the courts.

These legal developments were unfolding against the backdrop of central government accepting the World Bank's structural adjustment programme, which included agricultural reforms allowing private parties to buy directly from farmers at market price. Under Nitish Kumar's leadership as Union Agriculture Minister, the Ministry of Agriculture established an Expert Committee in 2000, followed by an Inter-Ministerial Task Force, to review the current system

<sup>27</sup> *Dhirendra Kumar Akela v Bihar State Agriculture Marketing Board* (1984) Patna High Court PLJR 974 (FB).

<sup>28</sup> *B. & K. Traders v State of Bihar* (1975) Patna High Court, cited by V.K. Malhotra in *Bihar Agricultural Produce Markets Manual*, Malhotra Bros., Patna, 2001, 2.

<sup>29</sup> *Delhi Cloth and General Mills v Bihar Agricultural Produce Market Committee* (1992) Patna High Court PLJR 253.

<sup>30</sup> The Bihar Agricultural Produce Markets (Amendment) Act, 1992.

<sup>31</sup> The Bihar Agricultural Produce Markets (Amendment) Act, 1993, s. 3.

of agricultural marketing. They advocated loosening government regulation of agricultural markets in their recommendations, submitted in June 2001 and May 2002, respectively, to encourage “investments necessary for the development of commercial infrastructure and supporting services”. The National Conference of State Ministers, which the Ministry of Agriculture organised in 2002, discussed these recommendations.

Subsequently, in 2003, a Standing Committee of State Ministers was constituted under the Union Minister of State for Agriculture Hukmedo Narayan Yadav, to promote competitive marketing infrastructure and encourage professionalism in the market yard, and fee structures. This paved way for the K.M. Sahni committee to finalise a model law on agricultural marketing called the State Agricultural Produce Marketing (Development and Regulation) Act, 2003, provided for the establishment of private markets/yards, direct purchase centres, consumer/farmer markets for direct sales, and promotion of public-private partnerships in agricultural markets and contract farming.

Bihar was the only state to repeal its APMC law in 2006 rather than revising it to conform to the Model Act, to send a message to private players indifferent of the World Bank research admitting that “the APMC Act is not considered the major impediment to private sector participation in Bihar (unlike in most other states)...the market reform would enable an increase in the quantity and quality of the produce, better market management with private sector partners, higher market investment activity, and possibly higher employment generation across more developed supply chains”.<sup>32</sup> Additionally, the repeal of the APMC law claimed to encourage service providers to launch their companies and serve value chains, facilitating the development of backward links and dissemination of technology and knowledge to farmers.

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<sup>32</sup> “Bihar Agriculture: Building on Emerging Models of “Success”, Agriculture and Rural Development Sector Unit, South Asia Region, Discussion Paper Series, Report No.4 (World Bank 2007).

## Repealing Gains of Historic Farmers Movement

On August 10, 2006, the Bihar Agriculture Produce Market (Repeal) Bill, 2006, was introduced in the State Assembly. The repeal of the APMC negated the achievements of the farmers’ movement during 1855-1928. The Royal Commission on Agriculture recommendations to regulate agricultural markets, which opened the path for APMC laws across India, was called into question. Chief minister Nitish Kumar gave speeches after the Bihar APMC Repeal Bill was introduced. The Repeal Bill was opposed in the State Assembly by MLAs from opposing parties like Ram Deo Verma and Jagdanand Singh. A long procession in Patna protested against the legislation but the legislature passed the Bill. On September 1, 2006, the Bihar Gazette Extra-ordinary published the Bihar Agriculture Produce Market (Repeal) Act, 2006. The Bihar Agriculture Produce Market Act, 1960 and the Rules enacted under it in 1975 were both repealed by this Act. Although its legality is questioned, the High Court deemed it *intra vires*.

Vinod Kumar Kanth, the petitioner’s senior counsel, contended that the failure of the Act of 1960 to regulate agricultural produce markets was cited as a reason for passing the Repeal Act during the High Court hearing. This claim is unsupported by existing data, despite the Marketing Board having accumulated assets of Rs 197 crores at the time of repeal, indicating that the Bihar Agricultural Produce Market Board had been functioning well. He argued that the Repeal Act, enacted without a preliminary study, aimed to acquire the property of the Market Board. Its enactment defied agriculturists’ reasonable expectations. The Supreme Court recognised “legitimate expectation” as substantive doctrine in *State of Jharkhand v Brahmaputra Metallics Ltd* (2020). It is one way that Article 14 of the Indian Constitution ensures non-arbitrariness. When a decision-making body deviates from a predetermined standard and affects the rights of individuals affected by the decision, a legitimate expectation arises. No mere wish, hope, or anticipation will satisfy the condition of a legitimate expectation. The Supreme Court ruled in *Union of India v Hindustan Development Corporation* (1993) that “the legitimacy of

an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence... Such expectation should be justifiably legitimate and protectable". The court's ruling in *Ram Pravesh Singh v State of Bihar* (2006) reads, "a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the authority's regular and consistent past practise allows for such expectation in the normal course". The division benches of the Patna High Court or the Supreme Court did not consider the apex court observations.

According to the petitioner's attorney, the Bihar APMC law of 1960 was amended in 1982 with the President's prior assent to impose market fees by the proviso to Article 304(b) of the Constitution.<sup>33</sup> Similarly, repealing the 1960 Act required the President's assent. Article 304 of the Constitution covers restrictions on trade, commerce, and inter-state relations. The proviso to Article 304 (b) read with Article 304 states that despite anything in Article 301<sup>34</sup> or Article 303,<sup>35</sup> the Legislature of a State may by law impose any reasonable restrictions on the freedom of trade, commerce, or intercourse with or within that State as may be necessary in the public interest "provided that no Bill or amendment for the purposes of clause shall be introduced or moved in the Legislature of a State without the previous sanction of the President".<sup>36</sup> The enactment of the Bihar APMC Repeal Act did not follow this constitutional mandate.

The petitioner contended before the High Court that the Rules of Business, which must be followed before legislating an Act, were broken when the Repeal Act of 2006 was enacted. The petitioner's argument that "the withdrawal of

the said affirmative action in furtherance of implementing the Directive Principles of State Policy<sup>37</sup> is not permissible under the Constitution. It was urged that though no mandamus can be issued to enforce the Directive Principles of State Policy, but once an affirmative action has been taken, the same cannot be allowed to be retracted by nullifying the action taken in furtherance of Article 46 of the Constitution". Article 46 requests that the State safeguard weaker sections from exploitation and advance their economic interests. The petitioner drew the court's attention to the *Heydon's case* (1584) mischief rule and argued that since the Bihar APMC Act, 1960 "was enacted to suppress the mischief of unregulated market of agricultural produce prevalent in the markets, the repeal of it without any material to substantiate the same would revive the mischief for suppressing of which previous enactment was enacted".<sup>38</sup>

Four things must be determined based on the Heydon case ruling and Lord Edward Coke's method by which the Court must interpret the law. The first is what the common law was before the creation of the Act. The second question was what mischief and defect the law did not cover. Third is the remedy the legislature decided. Fourth, the true purpose of the remedy; and finally, the office of all judges is always to make such constructions to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*-for private or personal gain, and to add force and life to the remedy, by the true intent of the makers of the Act, *pro bono publico*-for the public good. One of the greatest jurists, English Chief Justice Coke declared that legislation is invalid if against "common right and reason". According to the Supreme Court ruling in the case of *Swantraj v State of Maharashtra* (1975), "every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the cue from the rule in Heydon's case of suppressing the evil and advancing the remedy".<sup>39</sup> It is obvi-

<sup>33</sup> Bihar Agriculture Marketing Board Employees Association v State of Bihar (2008) (2) PLJR.

<sup>34</sup> Article 301 of Constitution of India, 1950 deals with freedom of trade, commerce and intercourse throughout the territory of India.

<sup>35</sup> Article 303 deals with the restrictions on the legislative powers of the Union and the States with regard to trade and commerce with reference to any entry relating to trade and commerce in the Union List, State List and Concurrent List given in the Seventh Schedule of the Constitution of India, 1950.

<sup>36</sup> Constitution of India, 1950, Proviso to Article 304(b).

<sup>37</sup> Constitution of India, Article 46.

<sup>38</sup> Bihar Agriculture Marketing Board Employees Association v State of Bihar (2008) (2) PLJR, para 3 B.

<sup>39</sup> Swantraj v State of Maharashtra (1975) Supreme Court 3 SCC 322.

ous that the law repealing the Bihar APMC Act, 1960 is against “common right and reason” in light of these interpretations of law. The Supreme Court rejected the appeals against the repeal without substantive hearing. The Court's verdict should be reviewed for constitutional and jurisprudential reasons at the earliest.

## Impact of Dismantling of Regulatory Institutions

The dismantling of pre-existing regulatory institutions and infrastructural paucity for agricultural and allied commodities has contributed to inadequate price realisation in the face of price volatility adversely affecting farmers' income. With the repeal of the Bihar Agriculture Produce Market Act, it “was expected that this would enable private players to set up and run the markets. Unfortunately, this did not happen”.<sup>40</sup> Since agricultural produce market committee (APMC) mandi system was abolished, farmers struggle to get fair prices for their commodities. Bihar had 95 market yards when the Bihar APMC Act was repealed. Out of those, 54 yards had infrastructure like covered yards, godowns and office buildings, weighbridges, processing and grading equipment, and administration buildings. The State Agricultural Board earned 60 crores as taxes in 2004–2005 and spent 52 crores. 31 percent of the money spent went towards building infrastructure.<sup>41</sup> After the repeal, APMCs became redundant, and the resulting lack of infrastructure reduced farmers' income. Bazar Samitis, of which there were 129, became non-existent. Audit reports of the public institutions of the APMC law are disregarded.

At the eighth meeting of Committee of State Ministers to promote agricultural marketing reforms in 2001, Dr. M.S. Jairath, Director, National Institute of Agricultural Marketing (NIAM), Jaipur, highlighted the need for market reforms and market development in the states without the APMC Act. Jairath emphasised the necessity

for Bihar to implement a more developmental and systematic regulatory system. In October 2012, as per the minutes of the eighth meeting, Vijayalakshmi, the Agriculture Secretary, Bihar, said that “despite no regulatory system, farmers are still getting remunerative prices”.<sup>42</sup> The letter from N. Saravana Kumar, Agriculture Secretary, Bihar, dated May 22, 2020, to Srabani Guha, Advisor, Union Ministry of Agriculture and Farmers Welfare, however, discloses that farmers are not receiving remunerative rates in the absence of a regulating mechanism.<sup>43</sup>

The NIAM observed at the ninth and last meeting of the Committee of State Ministers held in 2013 that such agricultural markets in states like Bihar completely lack the necessary marketing infrastructure, organised information transmission, general upkeep, and orderliness. Due to the absence of professional management, farmers face exorbitant transaction fees, lack of market information on prices and arrivals, etc. The Bihar Agriculture Minister served on this Committee of State Ministers. The NIAM emphasised that comprehensive market liberalisation in states like Bihar has not decreased transaction cost but rather raised it. It has done nothing to encourage private sector investment in these markets. It suggested that a progressive and pro-market institutional and legislative structure is required to draw investment to the agriculture markets. NIAM emphasised the requirement for a legislative and institutional framework to regulate the state's agricultural markets and draw investment for infrastructure.<sup>44</sup> In haste to restructure agricultural markets, the repeal of the Bihar APMC law is akin to throwing the baby with the bathwater. Over 90 percent of marginal and small farmers are in Bihar, hence APMC marketplaces are quite important. Infrastructure and institutions are simpler to destroy than to establish.<sup>45</sup>

<sup>40</sup> “Study on Agricultural Diagnostics for the State of Bihar in India” (National Council of Applied Economic Research 2019).

<sup>41</sup> Himanshu, “Lessons from Bihar's Abolition of its APMC System for Farmers”, *The Mint* (24 September 2020) <<https://www.livemint.com/opinion/columns/lessons-from-bihar-s-abolition-of-its-apmc-system-for-farmers-11600962615201.html>>.

<sup>42</sup> Final Report of Committee of State Ministers, In-charge of Agriculture Marketing to Promote Reforms, Department of Agriculture and Co-operation, Union Ministry of Agriculture (2013).

<sup>43</sup> Letter of N Saravana Kumar (n 21).

<sup>44</sup> Final Report of Committee of State Ministers (n 45).

<sup>45</sup> Sukhpal Singh, “Reforming Markets, Lessons from Bihar” *The Tribune* (Chandigarh, 6 February 2015) 9 <<https://www.tribuneindia.com/news/archive/comment/reforming-markets-lessons-from-bihar-37892>>.

The farmers in Bihar encountered transportation challenges to reach the APMC market yard even when they produced a surplus. They confined themselves to farming because they could not undertake marketing. Both primary and secondary markets for agricultural products needed a market yard for farmers with marketable surplus to store their crops. The local traders became key players in the primary markets. The government should have promised the farmers that their goods would be purchased. Instead, the APMC Law was replaced.<sup>46</sup> Although farmers protested against the repeal in the High Court and the Supreme Court, “lack of resources and awareness among significant number of farmers in Bihar could not assume the form of the protest pronounced like the one by the farmers of Punjab, Haryana and Western UP”<sup>47</sup>

The repeal of the APMC law weakened government control over procurement of agricultural goods. Earlier, the Agricultural Produce Market Committee organised *mandis* (wholesale markets) where farmers could sell their produce directly to the Food Corporation of India or the State Farming Corporation at the fixed minimum support price (MSP), insulating the farmers from market instability. After the APMC Law was repealed, panchayat-level organisations known as Primary Agriculture Credit Societies (PACS) were established. PACS function as middlemen in purchasing agricultural products from farmers and selling to the FCI, SFCs, and private companies. Since the APMC law was repealed, Primary Agriculture Credit Societies (PACS), panchayat-level societies, have been established. An NCAER study reveals that procurement operations are viewed as excessively arbitrary without oversight. “PACS does not procure wheat at a time, which otherwise it should when there is a glut in the market, and consequently farmers get lower price. Even at PACS, farmers receive a price much lower than the MSP and payments are not made in time after selling their produce at PACS. Farmers mentioned that the non-availability of a fair

price is the most important constraint in expanding agricultural output”.<sup>48</sup>

Anil Singh, a farmer leader, voiced his complaints regarding PACS corruption at two sessions of the All India Kisan Sangharsh Coordination Committee held in Patna on March 25, 2022, and April 16, 2022. He emphasised that the PACS officebearers rob farmers by decreasing 5 kg for moisture and charging Rs 25 per bag. They work in concert with cooperative authorities to deny farmers their dues not open procurement centres on time. As a result, cash-starved farmers are forced to sell to the open market traders. The PACS officebearers then buy produce from the traders who acquire it cheaply from the struggling farmers. The PACS officials, government employees, and traders share the profits made this way. The claim that PACS is superior to the corrupt APMC is false. Although PACS was intended to safeguard farmers and increase their earnings, the farmers actually received far lower prices due to private players, late bill payments by government agencies, and distress sales at throwaway prices.

Before the APMC Act was abolished, farmers paid a nominal fee for space at a local *mandi* run by an eighteen-member market committee made up of elected and government-nominated members, as described in Section 6 of the amended APMC Law. The Bihar Agricultural Marketing Board, which included five members of the Market Committee constituted under Section 33 A of the modified law, had control over this market committee. Buyers were legally obliged to register with the APMC *mandi* making it possible to enforce MSP strictly. Farmers could postpone selling their harvest at a profit because the APMC had room to store the agricultural products. Typically, the payments were made on the same day the product was sold. Regarding payment terms, Section 53(xii)-(xxix) of the Bihar APMC law gave the Market Committee the authority to create by-laws for the sale of notified agricultural produce, the execution of the sales agreement, the determination of the maximum credit period granted to the buyer, enforcement of the payment for the price of the

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<sup>46</sup> Personal Communication with Sushil Kumar, Former Market Secretary, Bihar State Agriculture Marketing Board (Patna, 12 January 2022).

<sup>47</sup> Personal Communication with Rambabu Singh, Former Acting Market Secretary, Bihar State Agriculture Marketing Board (Fatuha, 14 January 2022).

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<sup>48</sup> National Council of Applied Economic Research, “Study on Agricultural Diagnostics for the State of Bihar in India” (2019) 50.

agricultural product, and the procedure to be used when any licenced trader suspends payment, becomes insolvent or refuses to fulfill his liabilities and obligations.

Complications and anomalies in the PACS system seem to be everywhere, starting with registration, which calls for documentation of the land that farmers cultivate leaving many farmers outside of the digital PACS procurement system due to low internet density. For those who have “adequate access and effective utilisation of the internet” and others who are deprived due to “insufficient access and inefficient usage of the internet”, this establishes a new class of “haves” and “have nots”. The question of access diffusion is unaddressed. The distinction between access and utilisation is yet to be understood. The traditional proxies for measuring the access gap do not sufficiently capture the development of the installed information and communication capacities. This necessitates conceptualising the farmers' access capacity. The vast number of cell phone and internet subscriptions does not indicate that farmers have equal access to information. The number of digital devices that farmers own is not the same as the capacity measurement. Regarding the perceived demand of the farmers, the actual flow and capacity of information is a consideration in the effectiveness assessment of digital infrastructure designed for farmers. Meanwhile, “digital public infrastructure for agriculture” is being built.<sup>49</sup> Memorandum of Understandings with ten firms including Microsoft, Amazon, Cisco, Jio, ITC Limited, Patanjali and others have been signed to advance “Agristack” pilot projects, a platform of databases to envelop 9.3 crore agricultural households through the controversial unique identification/Aadhaar number. The provision for an electronic trading and transaction platform under the central Bypass APMC law faced unprecedented resistance. The proponents of PACS and digital agriculture have not taken these elements into consideration.

The difference between farm harvest prices and MSP for paddy, wheat, and maize has either widened or remained the same at the pre-APMC level of 2006. This is revealed by a comparison

<sup>49</sup> Nirmala Sitharaman, Union Budget Speech 2023-24, 1 February 2023.

of pricing trends in Bihar before and after the APMC Act was repealed. Not a single marketing season between 2007-2008 and 2016-2017 saw prices in Bihar exceed MSP. In four seasons, the prices of various agricultural products stayed at 90 per cent or above MSP. Two seasons saw prices in Punjab exceed MSP, but only one saw them drop below 90 percent of MSP. Prices ranged between 70 and 80 percent of MSP in three of the ten seasons between 2007-2008 and 2016-17 following the repeal of the APMC Act, and between 80 and 90 per cent of MSP in the other six.<sup>50</sup> Given this context, farmers' gnawing concerns about the MSP's uncertainty and mistrust of the free market are reasonable.

Meanwhile, procurement centres of the state government of Bihar for agricultural products have shrunk from 9,000 in 2016 to 1,619 in 2020.<sup>51</sup> The Bihar Agriculture Market Yard Land Transfer Ordinance, 2017 was promulgated for the construction of “the multipurpose Prakash Kendra and Garden on the 350th jubilee of the tenth Sikh Guru Shri Guru Govind Singh” as opposed to creating infrastructure for agricultural produce and weakening the provisions of the Bihar Agricultural Produce Market (Repeal) Act, 2006. The Bihar Agricultural Produce Market (Repeal) Act gave the State Government ownership of the farm market yard land owned by the Bihar Agriculture Department, which has since been permanently transferred to the Bihar Tourism Department. The Schedule of the Ordinance reveals that the Tourism Department in Patna City received a 10 acres plot of land purchased for a market yard on September 20, 2017. The Bihar Agriculture Market Yard Land Transfer Act was subsequently passed in December 2017.

Bihar Agriculture Market Yard Land Transfer Act was necessary as a result of Section 4 (vi) of the Bihar Agricultural Produce Market (Repeal) Act, which states that “all movable assets of the

<sup>50</sup> Atul Thakur, “Bihar Junked APMC Act in '06, but it hasn't Benefited Farmers” The Times of India (3 January 2021) <<https://timesofindia.indiatimes.com/india/bihar-junked-apmc-act-in-06-but-it-hasnt-benefited-farmers/articleshow/80078630.cms>>.

<sup>51</sup> Dheeraj Mishra and Kabir Agarwal, “Bihar Did Not Meet Even 1% of its Wheat Procurement Target” The Wire (15 September 2020) <<https://thewire.in/agriculture/bihar-wheat-procurement-target-failure>>.

Board or the Committee shall be utilised only for agriculture and farmer relating activities including the establishment of agro-processing industries, horticulture, agro-service, agricultural marketing, and storage of agricultural produce". The assets and liabilities of the Bihar Agricultural Marketing Board were transferred to the State Government by Section 4 of the Repeal Act. According to Section 4(i), the State Government shall become the owner of all assets, including both movable and immovable property, owned, possessed, or otherwise claimed to belong to the Board, the committee, or samiti, as of the day the Act is in force. The State Government shall be liable for all obligations, whether statutory or not, secured or unsecured.

The effect of these specific provisions is eliminated with reference to 10 acres of land with the passing of the Bihar Agriculture Market Yard Land Transfer Act. More than 2,400 acres of leftover agriculture market yard land and other properties could be transferred for non-agricultural purposes under this law. After the APMC law was repealed, the "administrator" or special officer was handed control of all such committee assets. The State government gave the concerned sub-divisional officers in charge of the agricultural produce markets responsibility for the market committees. The Bihar Agricultural Produce (Repeal) Act is also being changed to allow for the transfer of agricultural market yard land for non-agricultural uses. It runs counter to the legislature's initial intentions. It exhibits blatant insensitivity to the urgent need for infrastructure to sell and store agricultural products.

Out of the 95 regulated APMC markets in the pre-APMC repeal period, 54 markets had rudimentary marketing infrastructure. Around 1595 acres were used to build these 54 markets. Undeveloped land occupied about 813 acres. The basic infrastructure existing before the abolition of the APMC law may be used for non-agricultural uses; after the legitimisation of transfer of agricultural market yard land for non-agricultural purposes. In the post-APMC era, the market yard land is also being invaded. By eliminating old *mandis*, entry barrier of the APMC law was eliminated. The agricultural infrastructure that is currently in place should

have been improved to give farmers greater facilities, enabling more farmers to visit markets.

According to a news report from Begusarai and Khagaria, farmers sell produce to small traders who supply it to larger commission agents-cum-traders. In turn, the processors/millers only deal with the major traders. Despite Bihar's Agricultural Produce Market (Repeal) Act allowing this since 2006, the major traders aren't purchasing directly from farmers. Since the APMC repeal passed, Gulab Bagh near Purnia has been the only operational *mandi* in Bihar run by private traders without official supervision. It used to manage 3-4 train rakes each day during the peak maize season, from mid-April to mid-July, during 2005-2006. These rakes, each of twenty-six hundred tonnes, were previously loaded from the railway stations in Purnia, Ranipatra, and Jalalgarh. Currently, loading is down to one rake. Around 80 percent of the sellers are farmers living within a 20-25 km radius, while the remaining 20 percent are local *vyaparis*.<sup>52</sup> It is clear that Gulab Bagh will eventually join Patna City market yard in the annals of history. The post-APMC era has provided a fertile ground for larger and uncontrollable agribusiness tycoons as the new middlemen rather than eliminating intermediaries, the commission agents.

The Economic Survey in 2018 established that real agricultural revenue has stagnated due to the abolition of APMC. Undeniably, agricultural input and production costs have significantly increased while farmers' incomes are stagnant. Although everyone's incomes and salaries, even those of lawmakers and judges, have increased, 94 percent of farmers are not covered by income security because their income has remained the same, which has led to the marginalisation of farming communities. In comparison to even the lowest-paid government employees, farmers' situation is likely to worsen when the 15th Finance Commission recommendations are put into practice. The lawmakers and policymakers seem to be oblivious that these very farmers saved the country from ship-to-mouth

<sup>52</sup> Harish Damodaran, "Other Side of APMC Repeal: Bihar Farmers Want Mandis, 'like Punjab'" Indian Express (2 November 2020) <<https://indianexpress.com/elections/bihars-farmers-give-the-thumbs-down-to-apmc-reform-6912652/>>.

existence to feed Indians without waiting for ships to arrive.

Although agriculture is the biggest employer, the existing policies and laws continue to give it least priority in comparison to the corporate sector which has extracted right to limitless<sup>53</sup> and anonymous donations to political parties by getting the Companies Act, 2013 amended through Finance Acts of 2016 and, 2017.<sup>54</sup> The former Union Finance Minister revealed in his budget speech that “donors have also expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and cause adverse consequences”.<sup>55</sup> To relieve corporate donors and ensure their anonymity, the government introduced electoral bonds. These bonds are causing law and policy-driven dispossession, deprivation, misery and distress migration of agriculturists. It is now up to the legislatures to address this agrarian crisis which is transforming into a crisis of civilisation.<sup>56</sup>

The potential of agriculture to revive the economy of Bihar has yet to be acknowledged. Agriculture generates about 19 percent of the state's net domestic product and nearly 24.84 percent of the Gross State Domestic Product (GSDP), but farmers' income has remained flat due to unchecked inflation, rising agricultural production costs, and government's unpaid liabilities, which account for about 32 percent of the GSDP.<sup>57</sup> While awaiting the promised central grant of Rs. 600 crore for agricultural mechanisation, the declaration of Bihar's special status, and Rs. 7,405 crore as Goods and Services Tax (GST) compensation for the year 2021-2022 under the GST (Compensation to States) Act,

2017, the State government has allocated 3.5 percent of its total expenditures to agriculture and allied activities, which is less than the average allocation for agriculture by states (6.2 percent).

## Prime Minister's Apology, Chief Minister' Silence

In light of this, Prime Minister Narendra Modi's apology to farmers in his address to the nation and the letter from the Bihar Department of Agriculture support the arguments made by petitioners who contested the constitutionality of the 2008 repeal of the Bihar APMC Act in the High Court and Supreme Court.

“While apologising to the countrymen... I want to tell you, the entire country, that we have decided to repeal all three agricultural laws. We will complete the constitutional process to repeal these three agricultural laws...”<sup>58</sup> the Prime Minister declared in response to the year-long protest of the farmers during which more than 700 farmers lost their lives. The contentious agriculture legislation has been overturned as promised to the nation.<sup>59</sup>

The Chief Minister of Bihar, Nitish Kumar, commented in response to the central farm legislation, notably the central Bypass APMC Act, being repealed: “The central government got the farm laws cleared in Parliament. It was the decision of the PM.... The decision is his, there cannot be any reaction to this”.<sup>60</sup> But a close examination of the letters sent by the State Government to the Union Government in May 2020 before the ordinances for the farm laws, including the bypass APMC law dated June 5, 2020, shows that before the promulgation of these laws, the Bihar State Agriculture Secretary wrote a letter dated May 22, 2020 to the advisor to the Union Ministry of Agriculture and

<sup>53</sup> Two independent organisations, Association for Democratic Reforms and Common Cause have filed a Public Interest Litigation in the Supreme Court of India challenging five amendments made to different statutes through Finance Act 2017 and Finance Act 2016 on the ground that they have opened doors to unlimited, unchecked funding of political parties.

<sup>54</sup> The Companies Act 2013, s 182.

<sup>55</sup> Arun Jaitley, Union Budget Speech 2017-18, 1 February 2017 <<https://www.indiabudget.gov.in/doc/bspeech/bs201718.pdf>>.

<sup>56</sup> Gopal Krishna, “Why Farmers and Farm Workers are Demanding Special Session of Parliament” (2019) LVII(6) Mainstream <<http://www.mainstreamweekly.net/article8478.html>>.

<sup>57</sup> Bihar Budget 2022-23, Department of Finance, Government of Bihar, 28 February 2022.

<sup>58</sup> Prime Minister's Address to the Nation, 19 November 2021 <[https://www.pmindia.gov.in/en/news\\_updates/pms-address-to-the-nation-9/](https://www.pmindia.gov.in/en/news_updates/pms-address-to-the-nation-9/)>.

<sup>59</sup> The Farm Laws Repeal Act 2021, Gazette of India, Part II, Section 1, No 57, 1 December 2021.

<sup>60</sup> “PM Modi's Decision, No Comments Needed”: Bihar CM Nitish Kumar on Repeal of Farm Laws' (Press Trust of India, 19 November 2021).

Farmers' Welfare saying, "Bihar is one of the important maize-producing states and paddy is the main kharif crop of the state. Yet the farmers sell their produce at low price and do not get proper profit due to non-availability of marketing infrastructure, godowns and procurement facilities".<sup>61</sup> This clearly establishes that the State government informed the Union government that repealing the APMC law to attract private investment was not in the interest of farmers. However, the Union Government ignored the State Government's warning. It appears that it took the prime minister over 1.5 years to decipher the message and repeal the central bypass APMC law and other farm laws.

## CONCLUSION

A joint study of the Supreme Court order of January 2021 suspending Bypass APMC law, and the Patna High Court order endorsing the unconstitutional repeal of the Bihar APMC Act and the correspondence between the State Department of Agriculture and Union Ministry of Agriculture provides sufficient reason for restoring the Bihar APMC law as demanded by the All India Kisan Sangharsh Coordination Committee (AIKSCC), Bihar, in their memorandum to the President of India on November 26, 2021.<sup>62</sup> Additionally, the NCAER research argues in favor of government engagement "to conduct procurement operations to stabilise market circumstances". For the government to carry out such operations, it would be beneficial to establish a "price stabilisation fund". In practice, it provides a strong argument for reintroducing the Bihar Agriculture Produce Market Act. The diagnosis and recommendations of the World Bank were insufficient, as shown by the past 15 years following the repeal of APMC. For the fiscal year 2022-2023, Bihar State Budget proposes programmes for the development of all 54 *Bazaar Prangans* (marketing yards) to overcome shortcomings in agricultural marketing infrastructure. It is to be supported by loans amounting to

Rs 2,446 crores from the National Bank for Agriculture and Rural Development (NABARD).<sup>63</sup>

Additionally, with the aid of the Bihar State Milk Cooperative Federation Limited (COMFED) and a few private businesses, the State government is funding the construction of Common Facility Centers. Commercial organisations are receiving incentives to increase their storage capacity. Moreover, a plant is being built by the Bihar State Seed Corporation. The state government recognises the value of storage facilities and warehouses for farmers' welfare and agricultural marketing. The State Storage Agency is known as Bihar State Warehousing Corporation. The capacity of government-owned warehouses was utilised at 77.8 percent during 2020-21.<sup>64</sup> The government now understands that APMC is about how the government should interact with the agricultural industry. However, they must still understand that APMC is to agriculture what a government school is to the educational field. Public schools are deficient and have many flaws. They lack restrooms, and 80 percent of schools lack adequate washrooms for girls. However, it does not entail that public schools should be eliminated and replaced. It doesn't provide a justification for reduced budgetary spending on education to make room for private schooling. Government schools often do poorly, but not all of them are ineffective. With only one healthy meal per day, they represent the sole hope for the mid-day meal for many.<sup>65</sup> This lesson from the public schools applies to the state-established APMCs because only the government's involvement as a regulator can guarantee fair prices to the farmers.<sup>66</sup>

APMC is like the government hospital of the health sector. The lessons from the Pandemic, in particular, and the health care of almost all in general, underline that there is no alternative to government hospitals for health care. "Health is

<sup>61</sup> Letter of N Saravana Kumar (n 21).

<sup>62</sup> Memorandum submitted to President of India through District Magistrate, Patna by All India Kisan Sangharsh Coordination Committee, 26 November 2021.

<sup>63</sup> Tarkishore Prasad, Budget Speech 2022-23, Department of Finance, Government of Bihar, 28 February 2022.

<sup>64</sup> "Bihar Economic Survey 2021-22" Chapter III (Department of Finance, Government of Bihar 2022).

<sup>65</sup> Personal communication with P Sainath, Founder Editor, People's Archive of Rural India, (Patna, 20 September 2022).

<sup>66</sup> Gopal Krishna, "Indian State Wants the Right to be Absent for Protection of Farmers and Citizens" (2020) LIX(1) Mainstream <<http://mainstreamweekly.net/article10227.html>>.

a social phenomenon, and a public hospital is a social institution which cannot be studied in isolation from the societal conditions in which it operates”,<sup>67</sup> paucities of the health infrastructure does not create a logic for abolition. Schools and hospitals require refinement and public investment, and so does the APMC. Comparing APMC with government schools and hospitals provides economic justice, equity and equality lessons.

With regard to the central laws, including Bypass APMC Act, it is noteworthy that the Supreme Court suspended the operation of the farm laws in January 2021. Had the constitutionality of the Bihar APMC repeal law been reconsidered in the Supreme Court, it would have met a similar fate. The dismissal order of the Supreme Court can still be appealed in the Court,<sup>68</sup> especially on the ground that specific aspects of farmers’ concerns on the constitutionality of the repeal law are yet to be adjudicated.<sup>69</sup>

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<sup>67</sup> Vikas Bajpai, “The Challenges Confronting Public Hospitals in India, Their Origins, and Possible Solutions” [2014] *Advances in Public Health*, Hindawi Publishing Corporation 25.

<sup>68</sup> Personal Communication with Vinod Kanth, Senior Counsel, Patna High Court (Patna, 13 January 2022).

<sup>69</sup> Personal Communication with J P Verma, Counsel, Patna High Court (Patna, 14 January 2022).

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