Evolution of Regulatory Policy in Commodity Derivatives Markets in India

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Introduction

Regulatory law is like a palimpsest wherein one can see the imprints of earlier precedents and laws. This paper outlines the evolution of the commodity derivatives market and its regulatory architecture in India, and examines how certain regulatory practices such as making exchanges self-regulatory or setting up a regulator as an attached office of the government emerged. It also discusses how certain regulatory tools like price limits, trade bans, supersession of governing boards or transaction taxes came into being. There is no definitive work available on this.[1] Hence, an attempt is made to trace the history using official records like files, annual reports, committee reports, court verdicts, parliamentary debates etc. accessed from the National Archives in Delhi, the Parliament Library etc. In addition, newspaper reports from the archives of the Times of India were also referred to.

Organisation of Commodity Derivative Markets in Pre-Independent India

India is one of the early adopters of derivative contracts. Like any market, commodity derivatives trading in India emerged out of the particular hedging requirements of the trading/producer/importing communities. Kautilya's *Arthashastra*, written around 350–275 BCE (around the same time as Aristotle's Politics, which has the first recorded mention of the use of derivative contracts in ancient Greece[2]), provides evidence of forward trading in commodities practised in ancient India. *Arthashastra* directed the state to exercise its control on forward markets by fixing the price, after considering the cost of carry, including interest and storage costs. State intervention in derivative markets or the desire for intervention is a theme that recurs throughout the history of markets in India.

Organised and exchange based derivative trading in pre-independent India commences with the establishment of the Bombay Cotton Trade Association in 1875, nearly a quarter century after the first such trading happened in the world at the Chicago Board of Trade. While stock exchanges had a simultaneous birth with commodity exchanges in India, trading in equity derivatives seems to have come up only after commodity derivatives. Some scholars (Thomas, 1948) attribute the later prominence of stock exchanges to the rise of commodity companies and tighter regulation in commodity markets.

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Notwithstanding the negative perception about them as dens of speculators, commodity exchanges had a prominent place in the economy of those days, with its members adorning industrial bodies and provincial legislative councils/assemblies. There is mention of the cotton trade raising nearly Rs. 1.5 lakhs in 1.5 hours during the visit of the Governor of Bombay.[3] Shri T T Krishnamachari during the discussion in Parliament in 1951 on the Forward Contracts (Regulations) Bill (FCRA) refers to one of those exchanges, the East India Cotton Association (EICA), as a 'sort of government in itself which is in a position to influence the Bombay Government to do what it wants'.[4]

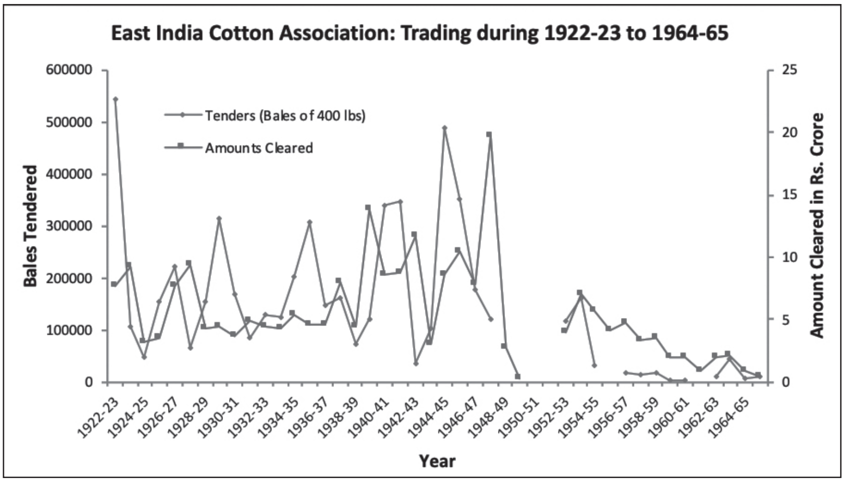
Foreigners participated on the commodity exchanges, which numbered around 180 in the undivided India (Kulkarni, 1951), unlike the ban imposed on them after independence until 2019. Complex instruments like, weather derivatives were being traded in India which is evident from the ban imposed on gambling based on rainfall and commodity prices in the various provincial Gambling Prevention Acts. It is believed that India contributed the idea of 'futures options' (options structured on commodity futures – a second order derivative) to the global commodity market workbook (Pavaskar, 2006). It had a vibrant system of integrated trading of spot and forward contracts on the same platform, unlike the present scenario wherein spot markets remain fragmented under various state governments while futures exchanges come under the Union government. Essentially the platforms aided contract based trading – be it for delivery today or days ahead. Further, there used to be no distinction between securities (share/equity trading) and commodity derivatives. In fact, at one point in time, law (the Bombay Forward Contracts Control Act, 1947 (BFCCA) provided for integrated regulation of securities and commodity trading. In the parliamentary debates there are references to Americans coming to India to understand futures market operations and the admiration they expressed for the efficiency with which this indigenous system works.[5]

The magnitude of futures transactions at the East India Cotton Association (EICA), the principal exchange during the pre-independence phase, is presented in Figure 1. While the volume of transactions is not available, the volume of tenders issued against contracts and the amount cleared are captured in the graph. The fact that 3–5 lakh bales were tendered through the exchange for physical delivery, which is roughly around 15–20% of the production of that time, shows the extent of hedger participation in the market.

Need for Regulation in India

In the beginning, there were no uniform guidelines or regulations (in the sense of that term as understood today) across these independent markets. They were rather based on mutual trust and faith. In other words, the regulatory tools were peer pressure and the social controls that exist in

Figure 1 Trade Statistics of East India Cotton Association: 1922–1966



Source: Pavaskar (1985), Table 1 (p. 47) and Table 2 (p. 102): Hedge trading was not permitted in 1950–52.

close-knit groups. Whenever such controls failed, there would be a crisis which was manifested in the form of payment defaults by trading members, inferior quality of the delivered good, etc. For this reason, the major trading associations sold out their memberships at hefty prices so that only credible players would enter into the trading ring. Since forward market transactions were in the nature of private trade, with reasonably rich mercantile participants knowingly taking the risk of default, the question arises as to why the government decided to intervene in the market's functioning.

The first known intervention by the state was in the case of cotton,[6] at Bombay, in the wake of World War I, based on the recommendation of Indian Cotton Committee presided over by J MacKenna, the then Agricultural Advisor to the Govt of India. It was to recommend measures to enhance the production of long stapled cotton in India to counter the threat posed to the British textile industry from potential export restrictions by the Americans[7]. The report,[8] written from the perspective of cotton consumers – the British textile industry and Bombay Mill Owners' Association (who were represented in the Committee) – went beyond the Committee's terms of reference, to point out that Bombay had 'no such properly regulated 'futures' market and no such system of weekly settlements as existed in Liverpool'. Hence, speculation was rife in the Bombay Cotton Markets 'to a degree which can only be regarded as highly undesirable'. The Committee stated that speculators who may or may not be in the cotton trade *could gamble in just paper contracts for the whole year without handling any actual cotton.* Hence, the Committee recommended that there is 'necessity for the exercise of some control over the 'future' markets of Bombay' and suggested that under a Royal Charter, a central

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body to be known as 'East India Cotton Association' (EICA), similar to the Liverpool Cotton Association, with its own clearing house for settlement, at least on weekly basis, should replace the seven associations which were trading in cotton at that time. Thus, the need for regulatory control of commodity derivative markets emerged out of the imperial interests of Britain, which were aligned well with the interest of Indian industrialists who wanted to get their raw materials at the lowest possible costs. This led first to the creation of a Cotton Contracts Control Committee in June 1918 in the interim, which was later institutionalised as Bombay Cotton Contracts Board – the predecessor of the Forward Markets Commission (FMC) – through the Bombay Cotton Contracts Control Act of 1919.

Before such specific commodity laws came into existence, the legal sanctity of forward contracts was tested against the provisions of the Indian Contract Act, 1872. As per this law, wagering or betting was void (i.e. it was not illegal to do betting but no recourse could be sought from court of law), but if the *intention of delivery* could be proved, then forward trading could be validated even though there was no actual delivery. It can be reasonably assumed that the practise of settling forward contracts by paying in cash the difference between the current market price and the price at which the contracts were entered into, (rather than actually delivering the commodity) was the norm rather than an exception. The regulation of, rather ban on forward trading, emerged also from a moralistic position against gambling and speculation (settlement of contracts by paying the difference in cash was perceived as speculation) and the concern for the hardships faced by participating 'poor innocent gamblers' who burnt their fingers. To control the damage caused by forward trading in general, gambling laws (Public Gambling Act, 1867) were resurrected in many provinces with some amendments around 1920's, and 'satta gambling' was made a punishable offence. Thereafter, custom-made forward contract laws began to override the Indian Contracts Act, 1872 and various state specific gambling laws.

This idea of state intervention never really faded away, despite the wave of liberalisation in the finished goods sector. Any fixing of the price of cloth was not appreciated but fixing the price of cotton discovered in the futures market was favoured. That shows how the mill owners' mindset determined market philosophy, given their influence at the highest echelons of power. Even now consumers' interests are often given precedence over producers' interests. The moralistic position on the market and the despise of gambling prevented timely amendments of the relevant laws, despite many government committees – Dantwala Committee in 1967, Khusro Committee in 1980, Kabra Committee in 1993 – recommending for the same. And post independence, as observed by the Raipuria Committee, 'many of the constraints inherited over decades of scarcity mindset generated 'inward looking' policies to continue' (GoI 2001).

Evolution of Exchanges as Self-Regulatory Organisations and 'Dabba' Trading

The idea of exchanges as self-regulatory organisations (SROs) emerged out of the private interest for retaining monopoly control over trade. When power was vested with a Government entity – Bombay Cotton Contracts Board – the industry which was determined to see that the *cotton trade did come to the hands of the merchants*,[9] asked for a board of control of its own and resurrected the idea of 'East India Cotton Association (EICA)' suggested by the MacKenna Committee as a substitute for the government's Board. The EICA was constituted by merging the hitherto existing seven cotton exchanges and assumed regulatory powers through the Cotton Contract Act of 1922. Even today exchanges continue to be SROs to a great extent, with powers to levy fines or suspend members as per their rules, sanctioned through a law passed by the Parliament. As alleged during the debates on the FCRA in the parliament, *the legislative power of the Parliament/ Legislature was getting gradually and tactfully delegated or transferred to the associations/exchanges* through these Acts. For those times, it was indeed very unusual that Parliament granted such powers to such private exchanges and government was in turn granted the power to veto or modify those rules.[10]

When law makers pushed the monopoly argument – that the unitary control of trade in the commodity can happen only if trade is happening in one exchange (which is the EICA for cotton) – through the Cotton Contract Act of 1922, trading elsewhere went underground, creating illegal/*dabba* trading[11] venues in mofussils. At that point in time, the law had not made contracts for associations other than the EICA illegal, but only *void* (meaning rights cannot be enforced in a court of law). Despite that, Courts ordered recovery of money from the unauthorised traders in default, thereby sustaining the business in *dabba* venues. While trading in the EICA was dominated by the rich mill-owners class, a rival unauthorised exchange – the Mahajan Association – appeared on the fringes and started operating 24 hours a day on a variety of contracts, whereas the EICA traded during fixed hours in limited varieties. The tussle between the EICA and the Mahajan Association reverberates to the present day and there do not seem to be any definite answers to certain issues, such as the desirability of

- competition in the exchange space or how many exchanges can operate in a country;
- widespread ownership of exchanges or whether some anchor investor should take the lead in promoting the exchange;
- balance in contract design or choice between a single hedge contract wherein several grades are deliverable which makes it bearish or different narrow contracts for each grade thereby making each one bullish;[12]
- a certain lot size of trading or the choice between mandating a bigger lot size to enable only credible players or smaller lot sizes so that small farmers can also participate; etc.

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The Mahajan Association finally merged with the EICA in 1947, in the wake of the Bombay Forward Contracts Control Act 1947 (BFCCA). When participation was limited to select big players, the idea of a brokerage came in, wherein the registered members took small-sized orders for their clients.

Historical Antecedence of Some of the Regulatory Tools

Most of the entries in the regulatory lexicon had their origin in war-time control measures like setting of price limits, suspension of trade, giving sellers the option in delivery (i.e. delivery is given only if the seller expresses the desire to deliver), etc. The concept of over-the-counter (OTC) contracts – transferable and non-transferable specific delivery contracts (TSD and NTSD) – was also a product of the Defence of India Rules, 1939 when there was an outright ban on forward trading during World War II, save for some custom-made purely delivery-based contracts.[13] The idea of superseding the governing body of the exchanges was enunciated to counter the non-cooperation movement of the 1930s, when Indian traders who were members of the EICA boycotted the European merchants and refused to trade with them.

Futures Options, as a product, never found favour with any of the policy makers, not even with the industry's own expert committee led by A D Shroff, one of the co-authors of the Bombay Plan who also crafted the FCRA. Options continued to be banned till SEBI permitted such options in October 2017. However, the grounds for banning futures options as elucidated by Dantwala committee, as given below, still holds good:

> The argument that options trading provides a hedge to the speculator against fluctuations in the futures market is untenable in as much as the very purpose of and the justification for his entry into the futures market is to assume professionally, the risk of price fluctuations. If it is contended that he too would need some protection in case the fluctuations become violent, it would constitute more a condemnation of the futures market than a justification of options. Futures trading is supposed to even out wide fluctuations and if it itself becomes a victim of violent fluctuations, the proper thing to do is to reform and regulate futures trading and not to take the aberration for granted and seek a dubious protection against it.

Most of the regulatory provisions that existed in the FCRA and carried over to the Securities Contracts Regulation Act (SCRA) were taken from the BFCCA. The FCRA was the outcome of intense debate over two and a half years on three versions of the Bill, overseen by two Select Committees. It was also the subject of the first scandal in independent India, wherein an M.P. was accused of taking a bribe for raising issues on behalf of the Bombay Bullion Association in Parliament, such as stamp duty and options trading, so as to move amendments to the FCRA Bill, 1950.

Evolution of FMC as an Advisory Body

The FMC followed the footsteps of the BCCB, set up in 1919. In the original Bill of 1950, there was no provision for creating a body like the FMC. This was recommended by the Shroff Committee which essentially transformed the original 'control' Act to a 'regulation' Act and recommended the setting up of an independent Commission.[14] As per the proposal of the Shroff Committee, government was to 'invariably seek the concurrence of the proposed commission in exercise of such powers' by the government. However, it was seen as a move by the industry to take control. Shri T.T. Krishnamachari had the following to state on this:[15]

> They want regulation, but at the same time they do not want Government to interfere. They want the creation of a Commission (FMC) to control the forward market, but at the same time they do not want the Commission to do this or that. They want the Government to interfere wherever they feel that associations are not doing the proper thing, but at the same time they want to put a check on the activities of Government in that regard. The attitude of that Committee (Shroff Committee), as I said, is typical of vested interest in this country who want Government aid for carrying on their own activities and to prevent competitors from entering into their own special field, however, undesirable or desirable they might be. At the same time they do not want to concede any power to the Government, whether wilfully or otherwise, whether due to ignorance of law or indifference to the working of law.

As per the provisions of the FCRA, the FMC was mostly an 'advisory body' and original regulatory powers were vested with the central government. India chose to adopt the regulatory model wherein the regulator is an attached office of the government (with no real powers of its own other than implementing what government directs it to do, contrary to the recommendations of the Shroff Committee), all for the fear of government losing direct control over the commodity market. The weaknesses in the regulatory architecture were well known and were admitted by the creators of law.

Contracts that Were Left Out of Regulatory Jurisdiction

The FCRA was applicable to those contracts or places or commodities as chosen by the government. Some members of the select committee wanted to insert a clause that no person can operate an exchange unless he obtained recognition from the government. However, the committee felt that such a blanket prohibition would be administratively difficult and the government felt that 'they should not undertake commitments which they cannot administratively fulfil'.[16] The government proposed to choose the places where they wanted to make the Act applicable and delineate very clearly the types of contracts it sought to control. It did not want to unnecessarily prohibit what is perhaps normal course of business, namely non-transferable specific delivery (NTSD) contracts, unless these contracts

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were misused in places where the associations are recognised and operate. Thus, under the FCRA, trading was to be held in a recognised exchange only in respect of select notified commodities and for the rest, anybody could organise an exchange even though in 1960 it was specified that such exchanges dealing in residual commodities should also get registered with the FMC (though not to be regulated). Further, the NTSD contracts were kept outside the purview of the Act.

Even though the FCRA dealt with exchange based, standardised contracts or futures trading, the said Act left the 'futures contracts' undefined. By implication, a futures contract had to be defined as a forward contract which is not a specific delivery contract. This lack of precision also confused the need and purpose of regulation of what is termed as 'forward markets'. The Dantwala Committee had recommended renaming the FCRA as Futures Contracts (Control) Act and the FMC as Futures Markets Commission.

It was stated in newspaper reports of that time that specific delivery contracts degenerated in actual practice into futures deals and entailed very often, unbridled speculation. In the parliamentary debates, many a member reiterated that regulation of NTSDs should be the normal rule and their exemption should be an exception. It was indicated that BFCCA was working well without such categorisation and none had a complaint about lack of exemptions to NTSDs. Apparently in the United States, OTC contracts were exempted from the purview of the Commodity Exchange Act. Exemption to NTSD and TSD contracts was drawn up following this line of argument and also because the government felt that if no exemption is provided the 'whole of Calcutta will object to the entire Bill' and that business interests should not be 'unduly affected by the recalcitrance of the Government'.[17] The second Select Committee of Parliament felt that the assurance given to the jute interests of Calcutta was better put in a clause for specific exemption.[18] Some members of Parliament insisted on granting exemption since they felt that the entire structure of FCRA was skewed towards providing a monopoly to the rich and powerful associations and, hence, if such ordinary transactions were mandatorily required to be made through those associations located in some city centres, it would be inaccessible for the small traders and farmers and 'perfectly unjustifiable'.[19] Further, it was felt that if there is a delay in payment or default in delivery then the spot contracts automatically fell into the realm of forward contracts and hardships due to such unavoidable circumstances needed to be minimised.[20] NTSDs received some charitable treatment also because they were allowed to be performed even under the war time control measures. However, it was held that if an association/exchange intends to facilitate the performance of an NTSD it has to be a 'recognised association' as speculation arises when there is an opportunity for a large number of persons to operate in the same contract for mere payment or receipt of the difference.[21] The dominant thinking was that without such an association and a body of persons who are given to such speculation, it is not possible to carry on such forward business.

The expert (Shroff) committee as well as the Second Select Committee viewed the misuse of NTSDs as an exception rather than the rule. The First Select Committee which looked into the Bill had provided for a clause by which it was the responsibility of the government to identify and inspect the locations where NTSD contracts were traded and then exempt them from the scope of associations working in that area. The amended provision advocated by the Second Select Committee provided for regulation of NTSD contracts if there is a positive demand for such inclusion. The two approaches, as summarised by the then Dy Speaker were 'regulate it first and then exempt it' and 'Exempt first and then regulate'. In other words, the first Select Committee's approach was that control was the rule and non-control was the exception whereas for the second committee non-control was the rule and control was the exception. Even though the Minister termed such differences as 'difference between tweedledum and tweedledee', many members pointed out how exchanges entering into NTSDs often made members square off their liabilities and scuttle the obligations of giving and taking delivery, citing cornering or crop failures.[22] Some wondered, if NTSDs or the real genuine contracts are left out of the purview of the Bill, then what would be left other than regulating wagering and speculation. The Bill would then 'legalise the most illegal thing – gambling,'[23] which was 'wrong in principle, useless in its operation and full of potentials for mischief'.

The mischief going to be created by the unregistered associations and exemption for NTSD and TSD contracts came back to haunt policy makers in later years in the form of rampant illegal /dabba trading. In fact, the mischief commonly associated with spot contracts or NTSD contracts came back as 'paired contracts' at the National Spot Exchange Ltd. (NSEL) years later in 2013, leading eventually to the repeal of the FCRA in 2015.

Idea of a Transaction Tax on Commodity Derivatives

While introducing the FCRA, the Minister gave the assurance that as time goes on and as government gets more and more competent to handle this 'rather difficult set of businessmen, who come within the same mischief of this particular enactment,'[24] it was prepared to extend the area of operation of the Act. For limiting regulation to the bare minimum, the Minister clarified that government is not proposing to levy a cess on transactions or levy a subscription from these associations to meet administrative costs. Thus, the absence of a tax on commodity markets was the compensation for having a meek and downsized regulator. The issue of imposing a transaction tax was explored later by the Kabra Committee in 1993 and an attempt to impose it was made in 2008, though it had to be retracted on the grounds of the nascent stage of development of commodity derivatives, before it

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Table 1 History of Indian Commodity Markets at a Glance

Year	*Event*
1851	Chicago Board of Trade commences forward trading in Corn in US
1875	Establishment of first commodity exchange in India – Bombay Cotton Trade Association
1917	MacKenna Committee /Indian Cotton Committee recommends control on futures trading
1918	Cotton Contracts Control Committee set up under Gilber Wiles
1919	Bombay Cotton Contracts Control (War Provisions) Act and establishment of Bombay Cotton Contracts Board (BCCB) under Gilber Wiles
1921	Establishment of East India Cotton Association (EICA) by merging existing 7 exchanges
1922	Repeal of 1919 Act and its replacement with a new Cotton Contracts Act 1922 (Bill No. XIII of 1922) which makes EICA a SRO
1927	Central Province moves amendments to Public Gambling Act 1867 to make satta gambling on rainfall commodity prices etc. a punishable offence.
1932	Cotton Contracts Act 1932 which gives power to the government to supersede the governing board of the exchanges
1939	outbreak of WW-II and consequent prohibitory orders on trading through Defence of India Act, 1939
1946	Morison Committee on Forward Trading
1947	Bombay Forward Contracts Control Act for regulated forward trading in goods including securities
1950	a draft Bill called Futures Markets (Regulation and Control) Bill circulated for comments which was examined by A D Shroff led expert committee
1952	Forward Contracts Regulation Act, 1952 was passed by the Parliament
1953	establishment of Forward Markets Commission (FMC) with Mr. B V Narayanaswami Naidu as its first Chairman
1960	Amendments to FCRA for making associations dealing in non-regulated commodities also to register with FMC, which was granted powers of a Civil Court; making illegal the publication of kerb (illegal trade) rates in newspapers, strengthening of penalty etc.
1960's	most of the commodities are banned for trading
1967	Forward Markets Review Committee under M L Dantwala
1971	amendments to FCRA to prevent spot trading getting disguised as forward trading
1980	Review committee under A M Khusro submits report
1993	Review committee under K N Kabra submits report
1998	Amendments to FCRA to empower FMC like SEBI, introduced in Rajya Sabha which was passed by Rajya Sabha in 2003, but could not be passed in Lok Sabha

2000	National Policy on Agriculture which committed to enlarge the coverage of futures market
2001	Raipuria Committee to materialise the National Policy announcement
2002	Recognition given for national level commodity exchanges with nation-wide network dealing in multiple commodities
2003	Wajahat Habibulla Committee Report on converging securities and commodities market
2005	RBI report to facilitate hedgers' participation through banks
2006	FCRA Amendment Bill introduced which could not be passed
2008	FCRA Ordinance followed by another amendment Bill which also could not be passed; Abhijit Sen Committee looking into the relationship between spot and futures markets
2013	CTT imposition, Payment crisis at National Spot Exchange and consequent transfer of administrative jurisdiction on commodity markets to Ministry of Finance
2014	Committee to suggest steps for fulfilling the objectives of price discovery and risk management of commodities market, under the Chairmanship of D S Kolamkar
2015	Repeal of FCRA and merger of FMC with SEBI by amending Securities Contracts Regulation Act 1956
2017	Option permitted; participation by Category III AIFs permitted; banks permitted as clearing/trading members
2018	Foreign investors permitted
2019	Mutual funds & portfolio management services permitted

finally made its entry in 2013. However, the commitment to do a timely review never materialised. The last major amendments to the FCRA were made in 1960 save for some definitional changes in 1971 and thereafter, the commodity derivative markets went into a regulator-induced coma.

Price Control vs Price Discovery

More than regulation, the FMC was interested in controlling the trade. The level of prices was the concern for the FMC rather than the quality of price discovery, leading to a near death of forward trading by end of the 1960's. Even the Government viewed the market more as a tool for price control rather than for price discovery and hedging. For instance, one of the terms of reference of the Khusro Committee set up in 1979 was 'to ensure forward trading remains constructive and *helps in maintaining prices within reasonable limits*'. As rightly observed by the Dantwala Committee (GoI, 1967), to attempt to keep down prices in the futures market irrespective of their behaviour in the spot markets is to destroy the utility of the futures markets. The committee emphasised that futures markets will fail to perform their legitimate function of providing an insurance against price

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fluctuations and thereby reducing the cost of marketing, if the powers of regulation are used to maintain futures prices at a level wholly out of line with prices in the spot market. '*Such a market could then be useful only for the speculators*', a prediction which has come true over the years. A summary of the major policy events is given in Table 1.

There were five unsuccessful attempts at amending the FCRA in post liberalisation India to make it suitable for the post-liberalisation commodity markets. However, the general adverse opinion /moralistic position about forward trading, opposition to introduction of options or participation of foreign investors prevented the emergence of the majority required for the passing of those amendments. Finally, pursuant to the payment crisis at NSEL, markets were freed up with the repeal of the FCRA and merger of markets under an independent regulator – SEBI – in 2015, thereby bringing back the concept of integrated markets prevalent in pre-independence India.

Notes

1 Most of the works (example, Bhattacharya 2007) rely on either the short summary given in the latest annual report of the Forward Market Commission (FMC) or that appears in the Abhijit Sen Committee Report (GoI 2008). Two books of historical value referred to in this context are K. R. Kulkarni's *Agricultural Marketing in India* (Kulkarni 1951) and Madhoo Pavaskar's *Saga of Cotton Exchange* (1985).

2 In book 1, Chapter 11 of *Politics*, Aristotle gives the anecdote of Thales of Miletus, a philosopher of that time, who by deducing from his knowledge of the stars that there would be a good crop of olives, paid deposits on all the oil-presses in Miletus and Chios before harvest season, thus securing an option on their hire. Then at the time of harvest he hired them out making profit (Jowett 1885).

3 'India and The War: Cotton Traders' Contribution Council Representation', *The Times of India*, 2 December 1916, p. 11.

4 Discussion on Forward Contracts (Regulation) Bill on 23 April 1951, accessed from *Parliamentary Debates*, Part II, Vol XI, 21 April–14 May 1951, pp. 7338–58.

5 Statement by Naziruddin Ahmad during the discussion on Forward Contracts (Regulation) Bill on 24 April 1951, accessed from *Parliamentary Debates*, Part II, Vol XI, 21 April–14 May 1951, p. 7371.

6 The only commodity in which some regulated trading happened in pre-independent India was cotton in the province of Bombay. The rest of the provincial states (like Bengal for jute) only sought to ban '*satta* trades' through various laws.

7 Source: Resolution constituting the MacKenna Committee and Resolution No. 674–191 of Government of India, Department of Revenue and Agriculture dated 2 August 1919, kept in F. No. 281 of 1918 of Central India Agency (continued in F. No. 341 of 1923; other references: 286 of 1925, 460 of 1930) kept at National Archives of India.

8 Para 250–252 of the report; excerpts of the reports were read out in the Legislative Assembly of Bombay on 24 March 1936 during a debate on the amendments to the Cotton Control Act, 1932.

9 'Hon. Mr. P. Thakoredas: Cotton Merchants' Appreciation', *The Times of India*, 1 December 1919, p. 7.

10 During the debate on FCRA Amendment Bill of 1957: *Lok Sabha Debates Second Series*, Vol VII, 6–13 September 1957, pp. 13574–578.

11 *Dabba* trading is any unauthorised and illegal trading outside the recognised stock exchange, in contravention of the law. Nowadays this is mostly done by brokers. The broking entities get client orders and put some of them on the recognised exchange. The rest of the orders are settled on a net basis sometimes using their own softwares and the rights or liabilities arising out of the contracts are adjusted on cash basis by the broking entities themselves instead of going through the clearing and settlement mechanism in the exchange. The net positions on the spot market are sometimes hedged on the derivatives market. In this way they save on the statutory cost and fees.

12 Mill owners and cotton-consuming parties preferred a single broad-based hedge contract against which many varieties and grades could be delivered. By increasing the available supply this had the potential of exerting a bearish influence on the prices of the product being traded. Brokers and jobbers, on the other hand, would prefer a large number of narrow contracts for specific grades of the commodity, which if not regulated, is prone to price rigging as the dominant players could control the deliverable supply.

13 For instance, the Cotton Forward Contracts Prohibition Order of 1943, while banning exchange based forward trading, permitted forward contracts for cotton of specific qualities or types and for specific delivery at specified prices, with the delivery orders, railway receipts and bills of lading against these contracts being non-transferable to third parties. Similar language was used in other commodities' Prohibition Orders also.

14 In February 1950, a draft Bill on this subject was circulated to the state governments, the Reserve Bank of India, Chambers of Commerce and various other interests concerned. This was not circulated in the Parliament. At this stage, the Bill was called the Futures Markets (Regulation and Control) Bill.

15 Statement by T.T. Krishnamachari, Lok Sabha Debate on 23 April 1951 during the discussion of FCRA Bill: *Parliamentary Debates*, Vol. IV, Part II, 30 July–12 August, p. 7345.

16 Statement by the Minister Shri T.T. Krishnamachari while introducing the revised Bill on 20 November 1952: *Parliamentary Debates*, Vol. V, Part II, 5 November–3 December, p. 946.

17 Ibid., pp. 954–58.

18 Statement by D.P. Karmarkar, Discussion on Forward Contracts (Regulation) Bill on 2 December 1952, accessed from *Parliamentary Debates*, Vol. V, Part II, 24 November–22 December 1952, p. 682.

19 Statement by the Minister Pandit Munishwar Datt Upadhyay (Pratapgarh East) on 20 November 1952, *Parliamentary Debates*, Vol. V, Part II, 5 November–3 December, p. 960.

20 Since by definition parties to the contract cannot extend it beyond eleven days.

21 An exception had to be made in areas where a number of associations which had been traditionally engaged in speculative business had to be excluded from such a business as a result of the creation of a recognised association. There was consequently a real danger that the associations or persons affected might continue to indulge in speculation outside the recognised association under the guise of NTSD contracts. Hence, the Bill provided that in any area in which an association has been recognised for regulating forward trading in any commodity, the same association will regulate all types of forward contracts, nontransferable as well as transferable. (Statement by Shri. T.T. Krishnamachari, Lok Sabha Debate on 11 August 1952 during the discussion of FCRA Bill: *Parliamentary Debates*, Vol. IV, Part II, 30 July–12 August, p. 6136.)

22 Debate on 21 November 1952 in Lok Sabha: *Parliamentary Debates*, Vol. V, Part

II, 5 November–3 December, pp. 1010–30, debate on 24 November 1952, p. 1092. Incidentally, the Deputy Speaker urged members to provide evidence so that the House could decide on the matter. Some members (Thulsidas) narrated the incident of cornering of groundnut in Hyderabad using NTSD contracts. It was pointed out that the Morarji Desai Committee which worked on BFCCA had decided not to exempt such contracts. It was pointed out that the government stepping in after the damage was done is not the preferred solution. C.C. Shah, one of the members of the second Select Committee and former solicitor general, as well as a legal advisor to many exchanges of those days, had given a dissent note for including NTSDs also under regulatory jurisdiction. (*Parliamentary Debates*, Vol. V, Part II, 5 November–3 December, p. 978.)

23 Statement of K.C. George, Rajya Sabha: *Parliamentary Debates*, Vol. 2, Nos. 1–22, 24 November–22 December 1952, pp. 804, 1052.

24 Statement by the Minister Shri T.T. Krishnamachari while introducing the revised Bill on 20 November 1952: *Parliamentary Debates*, Vol. V, Part II, 5 November–3 December, p. 946.

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