

The Essential Commodities Act, 1955
(10 of 1955)

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An Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:

LEGISLATIVE HISTORY ▼

- Adaptation of Laws (No. 3) Order, 1956
- Essential Commodities (Amendment) Act, 1957 (13 of 1957)
- Essential Commodities (Second Amendment) Act, 1957 (28 of 1957)
- Essential Commodities (Amendment) Act, 1961 (17 of 1961)
- Essential Commodities (Amendment) Act, 1964 (47 of 1964)
- Essential Commodities (Amendment) Act, 1966 (25 of 1966)
- Essential Commodities (Amendment) Act, 1967 (14 of 1967)(Provisions of this ceases to have effect from 31-3-1968)
- Essential Commodities (Second Amendment) Act, 1967 (36 of 1967)
- Central Laws Extension to Jammu and Kashmir) Act, 1968 (25 of 1968)
- Essential Commodities (Amendment) Act, 1971 (66 of 1971)
- Essential Commodities (Amendment) Act, 1974 (30 of 1974)
- Essential Commodities (Amendment) Act, 1976 (92 of 1976)
- Essential Commodities (Special Provisions) Act, 1981 (18 of 1981)
- Essential Commodities (Amendment) Act, 1984 (34 of 1984)
- Essential Commodities (Amendment) Act, 1986 (42 of

1986)

□ Essential Commodities (Second Amendment) Act, 1986 (73 of 1986)

□ Essential Commodities (Special Provisions) Amendment Act, 1993 (34 of 1993)

□ Essential Commodities (Amendment) Act, 2003 (37 of 2003)

□ Essential Commodities (Amendment) Act, 2006 (54 of 2006)

□ Essential Commodities (Amendment) Act, 2009 (36 of 2009)

□ Essential Commodities (Amendment) Act, 2010 (35 of 2010)

FACT SHEET ▼

□ This Act has been extended to Goa, Daman and Diu by Regulation 12 of 1962. Goa is now a State, see Act 18 of 1987, Section 3 (w.e.f. 30.5.1987)

□ and to Dadra and Nagar Haveli by Regulation 6 of 1963, Section 3 and Sch.I

□ and to Laccadive, Minicoy and Amindivi Islands by Regulation 8 of 1965. These islands are now known as Lakshadweep, see Act 34 of 1973, Section 3 (w.e.f. 1.11.1973).

□ It has been extended to the State of Sikkim by S.O.452(E) of 1975 and enforced therein w.e.f. 7.1.1976, see S.O. 18(E), published in the Gazette of India, dated 7.1.1976, Pt.Ii, Section 3(ii), Ext., p.59.

1. Short title and extent. - (1) This Act may be called The Essential Commodities Act , 1955.

(2) It extends to the whole of India [- - -].

Object & Reasons ▼

Under Article 369 of the Constitution, Parliament had power during a period of five years from the commencement thereof to make laws with respect to trade and commerce in, and the production, supply and distribution of certain essential commodities. The life of the Essential Supplies (Temporary Powers) Act, 1946 was therefore limited to the 26th January, 1955. The essential commodities to which that Act applied fell two broad categories, viz.,

(a) coal, textiles, iron and steel, paper, etc., which are products of industries under Union control; and

(b) foodstuffs, cattle fodder, etc., which are not products of such industries.

As public interest required that Centre should continue to have even after the 26th January, 1955, the same legislative powers as it had under Art. 369 of the Constitution, a Bill providing for the necessary amendment of Entry 33 of List 3 in the Seventh Schedule to the Constitution was passed by both Houses of Parliament in September last year. This amendment has now become law, having been ratified by the requisite number of States.

The Constitution (Third Amendment) Act, however, had not become law when the Essential Supplies (Temporary Powers) Act, 1946, expired, and therefore an Ordinance was promulgated to take effect on the 26th day of January, 1955, which provided for the regulation of trade and commerce in and the production, supply and distribution of commodities which fell within the first category referred to in the preceding paragraph. Under Entry 42 of the Union List, Parliament has power to regulate inter-State trade and commerce in all commodities and the Ordinance also provided for such regulation in Section 4 thereof but the application of that section was limited in the first instance to wheat, raw cotton and sugarcane.

Pending the passing of a Central law providing for control in respect of all essential commodities now falling within Entry 33 of the Concurrent List, certain State Governments have promulgated Ordinances or taken other legal action open to them for continuing controls in respect of such commodities as could not be included in the Central Ordinance.

The present Bill seeks to replace the Central Ordinance and at the same time includes within the definition of "essential commodities" those commodities which had to be left out by reason of lack of legislative power. To a very large extent, the Bill follows the provisions contained in the Essential Supplies (Temporary Powers) Act, 1946, but the penalty clause has been simplified and a few other provisions have been omitted as unnecessary." - Gaz. of India, 1955, Extra, Pt. II, Section 3, p. 51.

Amendment Act 66 of 1971. - Clause (j) of section 3(2) of the Essential Commodities Act, 1955 (hereinafter referred to as the Act) enables the Central Government, while making an order under section 3 of the Act, to provide for incidental and supplementary matters including the entry into and search of, premises and conveyances and the seizure by an authorised person of articles in respect of which any contravention of such order has taken place or is about to

take place. That clause does not expressly authorise the seizure of the coverings or receptacles in which the property is found or the conveyances used in carrying the property, although the Court is empowered to order their forfeiture to Government after trial. It is, therefore, proposed to amend that clause to empower the seizure of such coverings and receptacles, and to authorise the seizure of conveyances or animals used for the transport of offending goods when the person seizing the goods has reason to believe that the conveyance or animal is liable to be forfeited.

(2) Sub-section (3-B) of section 3 of the Act lays down the procedure for fixing prices of foodgrains, edible oilseeds or edible oils sold in pursuance of an order made under section 3(2)(f) of the Act. Such price is to be fixed having regard to : (i) the controlled price of foodgrains, edible oilseeds or edible oils fixed under that section or by or under any other law; and (ii) the price of the foodgrains, edible oilseeds and edible oils prevailing or likely to prevail during the post-harvest period in the area to which the order applies. The question of assessing the prevailing price or the price likely to prevail during the post-harvest period will arise only when there is no controlled price. It is, therefore, proposed to amend sub-section (3-B) suitably to make this clear.

(3) Section 5 of the Act enables the Central Government to delegate the power to pass orders under section 3 of the Act to State Government and to other officers or authorities mentioned in that section. However, as sub-section (3-A) of section 3 of the Act enables the issue of a notification, a doubt has arisen whether such a power to issue a notification can also be delegated under section 5. It is proposed to amend that section to make it clear that the power to issue such a notification can also be delegated.

(4) The Essential Commodities (Amendment) Act, 1964, inserted section 12-A in the Act. This section provides that the Central Government may, in the interests of production, supply or distribution of any essential commodity and other relevant considerations, by notification in the Official Gazette, specify any order made under section 3 of the Act to be a special order and when such a notification is issued, the contravention of that order may be tried summarily. The 1964 Act also inserted a new section 8-A in the Criminal Law Amendment Act, 1952, empowering the Special Judge, trying an offence, specified under sub-section (1) of section 6 of the Criminal Law Amendment Act, 1952, alleged to have

been committed by a public servant in relation to the contravention of any special order notified under section 12-A of the Essential Commodities Act, 1955 to try such offence in a summary way. The period of operation of the Essential Commodities (Amendment) Act, 1964 was originally limited upto the 31st December, 1966, but was extended upto the 31st December 1971, by subsequent Amending Acts. It is considered, after consultation with the State Governments and the Ministries of the Government of India, that section 12-A of the Act and section 8-A of the Criminal Law Amendment Act, 1952, should continue to operate even after the 31st December, 1971. Having regard to the fact that shortages of certain essential commodities are likely to persist for some time to come, it is considered desirable to place these two provisions permanently on the Statute Book instead of extending their period of operation from time to time. The Bill seeks to amend section 12-A to provide that any notification issued under that section will have operation only for a period of two years, with suitable saving provisions.

Amendment Act 34 of 1984. - The Essential Commodities Act, 1955, provides that, for maintaining of increasing supplies of essential commodities or for securing their equitable distribution and availability at fair prices, the Central Government (or by a State Government to which such powers are delegated by the Central Government) may issue orders for regulating or prohibiting the production, supply and distribution of such essential commodities and trade and commerce therein. In order to achieve these objectives, the Government has been vested with plenary powers to issue orders, e.g., for regulating production, storage, transport and distribution, for controlling the price, etc. Similarly the Act provides that if any person contravenes any order made under section 3 of the Act, he shall be punishable with imprisonment and shall also be liable to fine. There is, however, no provision in the Act enabling the Government to recover, in case of default, any amount which is required to be paid or deposited in pursuance of any such regulatory order. It is, therefore, necessary to amend the Act to include therein an express provision, enabling recovery of such amounts as arrears of land revenue, so as to remove the present lacuna.

Amendment Act 42 of 1986. - The Essential Commodities Act, 1955 (hereinafter referred to as the Act), provides that,

for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fair prices, the Central Government may issue orders for regulating or prohibiting the production, supply and distribution of such essential commodities and trade and commerce therein. In order to achieve these objectives, Government has been vested with plenary powers under the Act to issue orders for regulating production, storage, transport and distribution of such essential commodities for controlling the price, etc.

(2) Section 6-E was inserted in the Act in 1976 to provide that the Courts would be debarred from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity seized in pursuance of an order made under section 3 of the Act. For an effective implementation of the provisions of the Act, it is proposed to enlarge the scope of that section so as to bar the jurisdiction of Courts also in respect of the release of any package, covering or receptacle in which any seized essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity seized pending confiscation thereof under section 6-A of the Act.

(3) A new section 7-A was incorporated in the Act in 1984 to provide for an express provision to enable the Government to recover, in case of default, any amount which is required to be paid or deposited in pursuance of a regulatory order issued under section 3 of the Act as arrears of land revenue. But, in some of the States, Government dues are being recovered as a public demand. It is, therefore, proposed to suitably amend the provisions of section 7-A of the Act to enable the recovery of Government dues as a public demand also.

(4) Section 7-A also provides for simple interest at six per cent per annum payable by the defaulters from the date of such default of Government dues up to the date of the recovery thereof. It is considered necessary to raise the rate of interest from six per cent per annum to fifteen per cent per annum keeping in view the existing rates of interest charged by the banks.

(5) Under clause (e) of sub-section (1) of section 12-AA of the Act a Special Court can take cognizance of an offence for violation of the provisions of the Act only if a report to that effect is made by the police and not by any other officer of

the Government. This has been causing avoidable delay in taking action under the Act by the officials of the Food and Civil Supplies Departments of the Government against persons violating the provisions of the Act. To remove this lacuna, it is proposed to suitably amend the said section to enable authorised officers of the Central and State Governments also to make a report to the Special Courts.

Amendment Act 37 of 1986. - The Essential Commodities Act, 1955, provides, in the interest of general public, for control of production, supply, distribution, trade and commerce in commodities which have been declared as essential under the Act. To achieve these objectives, the Government has been vested with powers under the Act, to issue orders for regulating production, storage, transport and distribution of such essential commodities and for controlling the prices, etc. The Act at present does not confer any right on the aggrieved consumer or recognised consumer associations to file complaints in Courts.

(2) To promote voluntary consumer movement and to ensure involvement of consumers as well as recognised consumer associations in the enforcement of this Act, it is considered desirable to confer specific rights on the consumer and recognised consumer associations for filing complaints to be taken cognizance of by Courts. Accordingly, it is proposed to amend section 11 and clause (e) of sub-section (1) of section 12-AA of the Essential Commodities Act, 1955, to confer rights on the aggrieved consumers and recognised consumer associations to file complaints in Courts. It is also proposed to define a 'recognised consumer association' under the Act so as to mean a voluntary consumer association registered under Companies Act, 1956 or under any law for the time being in force.

Amendment Act 37 of 2003. - The Essential Commodities Act, 1955, inter alia, provides that, for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fair prices, the Central Government may issue orders regulating or prohibiting the production, supply and distribution of such essential commodities and trade and commerce therein so as to achieve the objectives of the Act.

2. The Central Government has been following a policy of partial control of sugar since 1966 and requisitioning a portion of sugar as levy sugar for the Public Distribution System. The Central Government has adopted a "regulated

release" mechanism for release of levy-free sugar (free sale sugar) by issuing orders under the Sugar (Control) Order, 1966. The said Order was last amended on 14th June, 1999. Clause 4 of the said Order empowered the Central Government to direct that no producer or importer shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it was produced or from the warehouses of importers except under and in accordance with a direction issued, in writing, by the Central Government. Similarly, clause 5 of the said Order empowered the Central Government to issue, from time to time, general or special order to producers, importers, recognised dealers, etc., regulating the production, maintenance of stocks, storage, sale, marking, weighment, disposal, delivery and distribution of any kind of sugar.

3. The recent challenge to the "regulated release" mechanism in the Courts has led to difficulties in its operation resulting in decline in sugar prices, which, in turn, has affected the capacity of the producers of sugar to pay cane price to the sugarcane growers. In order to safeguard the interests of the sugarcane growers, producers of sugar and the general public, to restablize the market price of sugar and to overcome the difficulties arising from the said challenge, it has become necessary to incorporate provisions in the Essential Commodities Act, 1955, enabling the Central Government to issue orders or directions to implement "regulated release" mechanism policy of the Government effectively.

4. Accordingly, it is proposed to suitably incorporate provisions analogous to clauses 4 and 5 of the Sugar (Control) Order, 1966 in the Essential Commodities Act, 1955 and to validate any action taken or anything done under the Sugar (Control) Order, 1966.

Amendment Act 54 of 2006. - The Essential Commodities Act, 1955 provides for the control of the production, supply and distribution of essential commodities. Section 3 of the said Act empowers the Central Government to control production, supply and distribution of essential commodities. It also empowers the Central Government under clause (b) of section 5 of the said Act to delegate the powers to make orders or issue notifications under section 3 to a State Government or an officer or authority subordinate to a State Government. Consequently, several control orders have been

issued under the said Act.

2. The need to relax various controls on agricultural products including controls on inter-State movement of such products was discussed in the Conference of Chief Ministers held on the 21st May, 2001. The said Conference recommended for constitution of a Standing Committee consisting of Central Ministers-in-charge of Agriculture, Commerce and Industry, Finance, Consumer Affairs, Food and Public Distribution, Rural Development and Deputy Chairman, Planning Commission as also the Chief Ministers of the States of Andhra Pradesh, Karnataka, Orissa, Assam, Uttar Pradesh, Punjab, Madhya Pradesh, Haryana, West Bengal, Kerala and Maharashtra, inter alin, to review the list of essential commodities and control orders to ensure free movement of agricultural produce. The said Standing Committee recommended that the restrictions on movement of all agricultural commodities should be removed and that the Essential Commodities Act, 1955 may continue as an umbrella legislation for the Central Government and the State Governments, and the States may use it when needed, but a progressive dismantling of controls and restrictions was also required. In pursuance of the said recommendation, various controls under the said Act pertaining to licensing, stock limits and movement restrictions have already been dispensed with vide No. G.S.R. 104(E), dated the 15th February, 2002 and G.S.R. 490(E), dated the 16th June, 2003 issued by the Government of India in the Ministry of Consumer Affairs, Food and Public Distribution.

3. The list of essential commodities has been reviewed from time to time with reference to the production and supply of these commodities and in the light of economic liberalization. On the basis of the recommendations of the aforesaid Standing Committee and in consultation with the concerned administrative Ministries, eleven commodities in the year, 2002 and three commodities in the year, 2004 have been deleted from the list of the essential commodities declared under sub-clause (xi) of clause (a) of section 2 of the said Act. However, certain commodities which have been defined in sub-clauses (i) to (x) of clause (a) of section 2 of the said Act could not be deleted through notification even though the Government consider necessary to delete those commodities from the list of essential commodities in the light of the improved demand and supply position. Therefore, the need has been felt for amending the said Act.

4. The salient features of the proposed amendment Bill are as follows:-

(1) The essential commodities, namely, (i) cattle fodder, including oilcakes and other concentrates; (ii) coal, including coke and other derivatives; (iii) component parts and accessories of automobiles; (iv) cotton and woollen textiles; (v) drugs; (vi) foodstuffs, including edible oil-seeds and oils; (vii) iron and steel, including manufactured products of iron and steel; (viii) paper, including newsprint, paper board and straw board; (ix) petroleum and petroleum products; (x) raw cotton, whether ginned or unginned and cotton-seed; (xi) raw jute; defined in section 2(a)(i) to (x) of the said Act and power under section 2(n)(xi) of the said Act to declare any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the Constitution, are being omitted.

(2) Simultaneously a new section 2-A(1) is proposed to be inserted which provides that the essential commodities listed in the proposed Schedule, namely, (i) drugs; (ii) fertilizer, whether inorganic or organic or mixed; (iii) foodstuffs, including edible oil-seeds and oils; (iv) hank yarn made wholly from cotton; (v) petroleum and petroleum products; (vi) raw jute and jute textiles; (vii)(a) seeds of food-crops and seeds of fruits and vegetables, (b) seeds of cattle fodder, and (c) jute seeds shall be the essential commodities for the purposes of this Act.

(3) Further the said new section 2-A(2), (3) and (4) empowers the Central Government to remove any commodity from the Schedule and also empowers the Central Government to issue notification to add any commodity in the said Schedule in the public interest when there is a scarcity of any commodity to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution. Such notification shall remain in force for a period of six months unless it is extended by the Central Government in the public interest and for the purpose reasons are to be recorded by the Central Government.

(4) It is also proposed to provide for continuance of the notifications, orders, any appointments made, licence or permit granted under section 3 of the said Act in respect of

essential commodities which are being retained in the proposed Schedule as essential commodities.

(5) Consequential amendments in section 3 and 12-A of the said Act are also being carried out.

Amending Act 47 of 1964. - "The question of controlling the prices of foodstuffs and other essential commodities and ensuring the supply and distribution in adequate quantities of these commodities has been engaging the close and constant attention of the Government. There has been widespread public criticism of the manner in which some sections of the trade and middlemen were able to get round, and render ineffective, the legal and administrative measures devised for the maintenance of supplies essential to the community. It was, therefore, felt that the existing procedure governing trial of offences relating to the supply and distribution of foodstuffs and other essential commodities and enforcement of the prices fixed for these commodities under the law should be amended immediately, in order to make the trial of these offences quick and effective. As most of the orders regarding the fixation of prices and maintenance of distribution and supply of essential commodities had been issued under Section 3 of the Essential Commodities Act, 1955, and the Criminal Law Amendment Act, 1952, to provide for summary trial of persons contravening order issued under Section 3 of Essential Commodities Act in relation to such of these essential commodities as may be notified from time to time and of public servants charged with offences of bribery, misconduct, etc., in regard to contravention of the said orders" - S.O.R. Gazette of India, 1964, Pt. II, Section 2, Ext., p. 831.

Amending Act 23 of 1966. - In order to make the administration of the Essential Commodities Act more strict it is proposed to provide for the forfeiture of packages, vehicles, animals etc., involved in the contravention of orders issued under that Act by amending Section 7 of that Act. Such power is now available under Rule 125(9)(b) of the Defence of India Rules, 1962.

It is also proposed to insert new provisions in the Essential Commodities Act, 1955, for the confiscation, by Collectors of districts of the foodgrains, edible oilseeds and edible oils which have been seized for contravention of any order issued under that Act and for appeals from the orders of the Collectors of the State Governments. Specific provision is also proposed to be made for the return, if possible, of the

articles seized or for payment of the value thereof if the person aggrieved by the order of confiscation succeeds in appeal or for payment of the value thereof if the person aggrieved by the order of confiscation succeeds in appeal or is acquitted by Court where prosecution is launched for the same contravention. This follows the pattern of Rule 125(8) of the Defence of India Rules, 1962, but has been strengthened with a view to ensure the observance of the principles of natural justice - S.O.R. Gazette of India, 1966, Pt. II, Section 2, Ext., p. 483.

Amending Act 36 of 1967. - At the conference of the Chief Ministers in July, 1967, at New Delhi, it was suggested that the penal provisions under the Essential Commodities Act, 1955, should be made more stringent and their implementation made more effective. The Government, after carefully examining the suggestion, considered it necessary to amend the Act by the Essential Commodities (Amendment) Ordinance, 1967, in certain respects as indicated below :

- (i) The Act as amended by the Essential Commodities (Amendment) Act, 1966 (25 of 1966), provided for the confiscation by district authorities of foodgrains, edible oils or edible oilseeds, whenever they were seized in pursuance of an order made under Section 3 of the Act. The Government considered that this provision should be enlarged to cover all essential commodities.
- (ii) Offences under the Act were not cognizable. It was felt that the offences should be made cognizable and bailable and further that the maximum punishment for certain offences under the Act should also be increased from imprisonment for three years to imprisonment for five years.
- (iii) The Act did not contain provision for awarding a minimum punishment to habitual offenders. For the proper working of the Act, it was considered necessary to provide for the award of minimum punishment to habitual offenders and also to empower the Court to direct that any such person shall not carry on any business in the essential commodity (with respect to which he has been convicted) for such period, not being less than six months, as may be specified by the Court.
- (iv) Persons committing offences under the Act sometimes escaped punishment for contravention of

orders made thereunder on the plea that the offences were not committed by them deliberately. It was felt necessary to amend the Act so as to make contravention of an order made thereunder punishable whether the order was contravened knowingly, intentionally or otherwise.

(v) The provision for summary trials under the Act is available only up to the 31st December, 1967. It was felt necessary to extend the operation of this provision for a further period of two years, that is to say up to 31st Dec., 1969.

(2) The present control over prices and distribution of sugar applies to the entire sugar production and stocks with factories, and is exercised under Section 3 of the Essential , Gktmodities Act, 1955. With a view to augment sugar production during the year 1967-68, the Central Government decided on a policy of partial control and to procure sixty per cent., or such higher percentage, as may be necessary, of the sugar production of factories in 1967-68 so as to make up the quantity of sugar procured to a minimum of 13 lakh tonnes. Such procurement will be at a fixed price for distribution through regulated channels. The balance of production will be available for sale by factories anywhere in India in the free market, subject to monthly releases to be sanctioned by the Government. The Government therefore considered it necessary to amend the Act by the Essential Commodities (Second Amendment) Ordinance, 1967, providing for the manner of fixation of the price of sugar whenever sugar is procured as mentioned above.

(3) It is considered necessary to take powers under the Act to issue orders under Section 3 thereof for securing any essential commodity for the defence of India or the efficient conduct of military operations also. For that purpose, it is proposed to amend sub-section (1) of Section 3 of the Act suitably.

(4) The Bill seeks to replace the two Ordinances aforesaid and to amend sub-section (1) of Section 3 of the Act for the purpose mentioned in paragraph 3.-S.O.R., Gaz. of Ind., 1967, Pt. II, Section 2, Ext., p. 1007.

Amending Act 30 of 1974. - The hoarders, black-marketeers are playing hell with the lives of millions of people in the country by violating the provisions of the Essential Commodities Act, 1955.

These man-eaters are too cunning and always escape through the lacunae in the law. Even in case when they are caught red-handed, they get immediate bail even from the police officer and try to tamper with evidence and foil the process of investigation. So, the administration of justice is reduced to a farce.

These undesirable and anti-social elements should be sternly dealt with.

To achieve, the very object of the Act, to secure effective administration of justice to ensure a free and fair investigation, it is necessary that such persons should not be released on bail.

Hence it is necessary to make every offence under this Act non-bailable.--Gazette of India, 3-5-1974, Pt. II, Section 2, Ext., p. 427.

Amending Act 32 of 1976. - The Essential Commodities Act, 1955, provides for the regulation of production, supply, distribution and pricing of essential commodities. Experience gained in the Working of the Act has indicated the need to make certain amendments in the Act. The amendments mainly relate to the following matters, namely :

- (i) in order to intensify the drive against hoarders and profiteers, it is proposed to provide that the powers of the Collector may also be exercised by an Additional Collector and such other officers, not below the rank of a Sub-Divisional Officer, as may be authorised by the Collector. A definition of the expression "Collector" is being inserted in the Act to achieve the said object;
- (ii) Levy orders made under Section 3(2)(f) have been struck down by the High Court of Orissa on the ground that orders under that section could only require a person to sell any essential commodity "held in stock", and consequently, such orders cannot be based on the quantity of land possessed by the concerned person. In order to meet the situation, it is proposed to provide that a levy order issued in relation to foodgrains, edible oilseeds and edible oils may fix, on a graded basis, the quantity to be sold by the producer, having regard to the estimated production of the crop in the concerned area and the aggregate area held by the producer under cultivation. -Gazette of India, 27-5-1981, Pt. II, S. 2, Ext., p. 960.

Amending Act 18 of 1981. - The Essential Commodities

Act, 1955 (hereinafter referred to as the principal Act) provides for regulation of production, supply and pricing of essential commodities. This Act had been amended from time to time.

2. In spite of extensive amendments made to the principal Act in 1976, experience has shown that some of the existing provisions of that Act have not been adequate and effective for expeditious disposal of cases as well as for ensuring the availability of essential commodities at fair prices and for curbing, hoarding and blackmarketing of and profiteering in, such commodities. There are large number of court cases pending under the principal Act all over the country and, the price rise has continued unabated in the years 1979 and 1980. For dealing more effectively with persons indulging in anti-social activities like hoarding and black-marketing and the evil of vicious inflationary prices, it is considered necessary to make the following special provisions by way of amendments to the principal Act for a temporary period of five years, namely :-

(a) in order to expedite the process of prosecutions under the principal Act, it is proposed to provide

(i) for the trial, in a summary way, of all offences under that Act; and

(ii) for the constitution, for the, purposes of such trial, of Special Courts, consisting of a single Judge who shall be appointed by a High Court and who shall be a person who is qualified to be a Judge of a High Court or who is or has been a Sessions Judge or an Additional Sessions Judge, for not less than one year.

(b) to strengthen the penal provisions of the principal Act with a view to deterring persons indulging in hoarding and blackmarketing in essential commodities from contravening the provisions of the principal Act. It is proposed to provide for-

(i) minimum mandatory imprisonment for a period of not less than three months for all offences under the principal Act except an offence of abetment in regard to procuring of foodstuffs or drugs by them for their own use or for the use of any member of their family, and not for the purpose of carrying on any business or trade which is proposed to be

punishable with fine only:

(ii) enhancement of the term of imprisonment awardable in case of conviction in a summary trial from one year to two years;

(iii) making of all offences under the principal Act to be non-bailable;

(iv) granting of bail by the trial court after giving the prosecution an opportunity to oppose the application and only in the exceptional cases specified in the new Section 12AA proposed to be inserted, to a person accused or suspected of the commission of an offence under the principal Act if there appear reasonable grounds for believing that he is guilty of the offence concerned; and

(c) In order to ensure availability of essential commodities to the consumers provision is being made-

(i) for sale of all seized essential commodities, the retail sale prices whereof have been fixed by the Central Government or the State Government as the case may be, through the public distribution system by enlarging the scope of Section 6A(2). The existing provision covers only foodgrains to be sold through fair price shops; and

(ii) for preferring appeal against the order of confiscation passed by the Collector of a district to the State Government instead of to a judicial authority.

3. The Bill seeks to achieve the above objects.-Gaz. of Ind., 24-2-1981, Pt. II, Section 2, p. 66. a regulatory order issued under section 3 of the Act as arrears of land revenue. But, in some of the States, Government dues are being recovered as a public demand. It is, therefore, proposed to suitably amend the provisions of section 7A of the Act to enable the recovery of Government dues as a public demand also.

4. Section 7A also provides for simple interest at six per cent, per annum payable by the defaulters from the date of such default of Government dues up to the date of the recovery thereof. It is considered necessary to raise the rate of interest from six per cent, per annum to fifteen per cent, per annum keeping in view the existing rates of interest charged by the banks.

5. Under clause (e) of sub-section (1) of section 12AA of the

Act, a Special Court can take cognizance of an offence for violation of the provisions of the Act, only if a report to that effect is made by the police and not by any other officer of the Government. This has been causing avoidable delay in taking action under the Act by+,the officials of the Food and Civil Supplies Departments of the Government against persons violating the provisions of the Act. To remove this lacuna, it is proposed to suitably amend the said section to enable authorised officers of the Central and State Governments also to make a report to the Special Courts.

6. The Bill seeks to achieve the above objects.- Gaz. of Ind., 24-7-96. Pt. II, Section 2, Ext., p. 3 (No. 30).

Act 73 of 1986. - The Essential Commodities Act, 1955, provides, in the interest of general public, for control of production, supply, distribution, trade and commerce in commodities which have been declared as essential under the Act. To achieve these objectives, the Government has been vested with powers under the Act, to issue orders for regulating production, storage, transport and distribution of such essential commodities and for controlling the prices etc. The Act at present does not confer any right on the aggrieved consumer or recognised consumer associations to file complaints in courts.

2. To promote voluntary consumer movement and to ensure involvement of consumers as well as recognised consumer associations in the enforcement of this Act, it is considered desirable to confer specific rights on the consumer and recognised consumer associations for filing complaints to be taken cognizance of by courts. Accordingly, it is proposed to amend section 11 and clause (e) of sub-section (1) of section 12AA of the Essential Commodities Act, 1955, to confer rights on the aggrieved consumers and recognised consumer associations to file complaints in courts. It is also proposed to define a 'recognised consumer association' under the Act so as to mean a voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force.

2. Definitions. - In this Act, unless the context otherwise requires,

[- - -]

- (ii-a) Collector includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under this Act;]

[- - -]

(b) food-crops include crops of sugarcane;

(c) notified order means an order notified in the Official Gazette;

[(cc) order includes a direction issued thereunder;]

[(d) State Government, in relation to a Union territory, means the administrator thereof;]

[(e) sugar means

(i) any form of sugar containing more than ninety per cent., of sucrose, including sugar candy;

(ii) khandsari sugar or *bura* sugar or crushed sugar or any sugar in crystalline or powdered form; or

(iii) sugar-in-process in vacuum pan sugar factory or raw sugar produced therein;]

[- - -]

STATE AMENDMENTS ▼

[2A. Essential commodities declaration, etc. - (1) For the purposes of this Act, essential commodity means a commodity specified in the Schedule.

(2) Subject to the provisions of sub-section (4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to

(a) add a commodity to the said Schedule;

(b) remove any commodity from the said Schedule, in consultation with the State Governments.

(3) Any notification issued under sub-section (2) may also direct that an entry shall be made against such commodity in the said Schedule declaring that such commodity shall be deemed to be an essential commodity for such period not exceeding six months to be specified in the notification:

Provided that the Central Government may, in the public interest and for reasons to be specified, by notification in the Official Gazette, extend such period beyond the said six months.

(4) The Central Government may exercise its powers under sub-section (2) in respect of the commodity to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.

(5) Every notification issued under sub-section (2) shall be laid, as soon as may be after it is issued, before both Houses of Parliament.]

3. Powers to control production, supply, distribution, etc., of essential commodities. - (1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and

availability at fair prices, [or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by subsection (1), an order made thereunder may provide,

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(c) for controlling the price at which essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

[(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1. - An order made under this clause in relation to foodgrains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area, of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2. - For the purposes of this clause, production with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;]

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs [- - -] which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be detrimental to the public interest;

(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

[(ii) for the grant or issue of licences, permits or other documents, the charging of fees therefor, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;]

[(j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination,

(i) of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be, committed and any packages, coverings or receptacles in which such articles are found;

(ii) of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

[(iii) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts or documents.]

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefor as hereinafter provided,

- (a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;
- (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;
- (c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

[(3-A)(i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the foodstuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefor

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any Court.]

[(3-B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State

Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3-A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to

- (a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;
- (b) the general crop prospects;
- (c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and
- (d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.]

[(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) whether a notification was issued under sub-section (3.4) or otherwise, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to -

- (a) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;
- (b) the manufacturing cost of sugar;
- (c) the duty or tax, if any, paid or payable thereon; and
- (d) a reasonable return on the capital employed in the business of manufacturing of sugar :

Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar :

Provided further that where any provisional determination of price of levy sugar has been done in respect of sugar produced up to the sugar season 2008-2009, the final determination of price may be undertaken in

accordance with the provisions of this sub-section as it stood immediately before the 1st day of October, 2009.

Explanation I. - For the purposes of this sub-section,-

- (a) "fair and remunerative price" means the price of sugarcane determined by the Central Government under this section;
- (b) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to the factory gate, to the extent it is borne by the producer;
- (c) "producer" means a person carrying on the business of manufacturing sugar;
- (d) "reasonable return on the capital employed" means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section.]

[Explanation II. - For the removal of doubts, it is hereby declared that the expressions "fair and remunerative price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d), of this sub-section do not include the price paid or payable under any order or any enactment of any State Government and any price agreed to between the producer and the grower or a sugarcane growers' co-operative society]

OLD LAW ▼

[(3-D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of, or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside, or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3-E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking,

weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

Explanation. - For the purposes of sub-section (3-D) and this sub-section,

- (a) producer means a person carrying on the business of manufacturing sugar;
- (b) recognised dealer means a person carrying on the business of purchasing, selling or distributing sugar;
- (c) sugar includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.]

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may by order, authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,

- (a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in-charge of the management of the undertaking, except insofar as may be specifically provided by the order; and
- (b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this section shall,

- (a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and
- (b) in the case of an order directed to a specified individual be served on such individual
 - (i) by delivering or tendering it to that individual, or
 - (ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

STATE AMENDMENTS ▼

4. Imposition of duties on State Governments, etc . - An order made under section 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

5. Delegation of powers. - The Central Government may, by notified order, direct that [the power to make orders or issue notifications under section 3] shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction.

6. Effect of orders inconsistent with other enactments. - Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

[6-A. Confiscation of essential commodity. - [(1)] Where any [essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order [may order confiscation of

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:]

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

[Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner

of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.] . -

[(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may

(i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

[- - -]

(3) Where any essential commodity is sold as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale, or auction or other incidental expenses relating thereto, shall

(a) where no order of confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6-C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner or the person from whom it is seized.]

STATE AMENDMENTS ▼

6B. Issue of show cause notice before confiscation of essential commodity. - [(1)] No order confiscating [any [essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance] shall be made under section 6-A unless the owner of such [essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance] or the person from whom [it is seized]

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the [[essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance];

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

[(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6-A if the owner of the animal, vehicle, vessel or other

conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.]

[(3) No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under clause (a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.]

STATE AMENDMENTS ▼

6C. Appeal. - (1) Any person aggrieved by an order of confiscation under section 6-A may, within one month from the date of the communication to him of such order, appeal to [any judicial authority appointed by the State Government concerned and the judicial authority" shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 6-A is modified or annulled by [such judicial authority], or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6-A, the person concerned is acquitted, and in either case it is not possible for any reason to [return the essential commodity seized], [such persons shall, except as provided by sub-section (3) of section 6-A, be paid] the price therefor [as if the essential commodity,] had been sold to the Government with reasonable interest calculated from the day of the seizure of [the essential commodity]

- (i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3-B) of section 3;
- (ii) in the case of sugar, in accordance with the provisions of sub-section (3-C) of section 3; and
- (iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3.]

STATE AMENDMENTS ▼

6D. Award of confiscation not to interfere with other punishments. - The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.]

[6E. Bar of jurisdiction in certain cases. - Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6-A, the Collector, or, as the case may be, [the

judicial authority appointed under section 6-C] shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, [any other Court, Tribunal or authority] shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle animal, vehicle, vessel or other conveyance.]

7. Penalties . - [(1) If any person contravenes any order made under section 3,

(a) he shall be punishable,

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:]

[Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term not less than three months;]

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the Court so orders, be forfeited to the Government.

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(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term not less than three months.]

(2-A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

[Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]

[(2-B) For the purposes of sub-sections (1), (2) and (2-A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months as the case may be.]

[(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the Court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the Court in the order.]

[7A. Power of Central Government to recover certain amounts as arrears of land revenue . - (1) Where any person, liable to

(a) pay any amount in pursuance of any order made under section 3, or

(b) deposit any amount to the credit of any Account or Fund constituted by or in pursuance of any order made under that section, makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made shall [whether such order was made before or after the commencement of the Essential Commodities (Amendment) Act, 1984 (34 of 1984), and whether the liability of such person to pay or deposit such amount arose before or after such commencement be recoverable by Government together with simple interest due thereon computed at the rate of [fifteen per cent.] per annum from the date of such default to the date of recovery of such amount, as an arrear of land revenue [or as a public demand].

(2) The amount recovered under sub-section (1) shall be dealt with in accordance with the order under which the liability to pay or deposit such amount arose.

(3) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, no Court, tribunal or other authority shall grant any injunction or make any order prohibiting or restraining any Government from recovering any amount as an arrear of land revenue [or as a public demand] in pursuance of the provisions of sub-section (1).

(4) If any order, in pursuance of which any amount has been recovered by Government as an arrear of land revenue [or as a public demand] under sub-section (1) is declared by a competent Court, after giving to the Government a reasonable opportunity of being heard, to be invalid, the Government shall refund the amount so recovered by it to the person from whom it was recovered, together with simple interest due thereon, computed at the rate of [fifteen per cent.] per annum, from the date of recovery of such amount to the date on which such refund is made.

Explanation. - For the purposes of this section, Government means the Government by which the concerned order under section 3 was made or where such order was made by an officer or authority subordinate to any Government, that Government.]

STATE AMENDMENTS ▼

8. Attempts and abetment. - Any person who attempts to contravene, or abets a contravention of any order made under section 3 shall be deemed to have contravened that order:

[- - -]

9. False statement. - If any person,

- (i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or
- (ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish, he shall be punishable with imprisonment for a term which may extend to [five years,] or with fine, or with both.

Form of Charge ▼

10. Offences by companies. - (1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took

place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section,

(a) company means any body corporate, and includes a firm or other association of individuals; and

(b) director in relation to a firm means a partner in the firm.

[10A. Offences to be cognizable [- - -] [- - -]. - Notwithstanding anything contained in the [Code of Criminal Procedure, 1973 (2 of 1974)] every offence punishable under this Act shall be cognizable [- - -] [- - -].

[* * *]

[10B. Power of Court to publish name, place of business, etc., of companies convicted under the Act. - (1) Where any company is convicted under this Act, it shall be competent for the Court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the company as if it were a fine imposed by the Court.

Explanation. - For the purposes of this section, company has the meaning assigned to it in clause (a) of the *Explanation* to section 10.

10C. Presumption of culpable mental state. - (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. - In this section, culpable mental state includes intention, motive, knowledge of a act and the belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]

11. Cognizance of offences. - No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860) [or any person aggrieved or any recognised consumer association whether such person is a member of that association or not.]

[**Explanation.** - For the purposes of this section and section 12-AA, recognised consumer association means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.]

STATE AMENDMENTS ▼

[12. Special provision regarding fine . - Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3.]

[12A. Power to try summarily. - (1) If the Central Government is of opinion that a situation has arisen where, in the interests of production supply or distribution of [any essential commodity not being an essential commodity referred to in clause (a) of sub-section (2)] or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order made under section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament:

[Provided that

- (a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 1971, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;
- (b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this

section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.]

[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences relating to

(a) the contravention of an order made under section 3 with respect to

[- - -]

(ii) foodstuffs, including edible oilseeds and oils; or

(iii) drugs; and

(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.]

(3) Notwithstanding anything to the contrary contained in [the Code of Criminal Procedure 1973 (2 of 1974),] there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month, [and of fine not exceeding two thousand rupees] whether or not any order of forfeiture of property or an order under [section 452] of the said Code is made in addition to such sentences, but an appeal shall lie where any sentence [- - -] in excess of the aforesaid limits is passed by the Magistrate.

[(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date,

as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.]

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[12B. Grant of injunction, etc., by Civil Courts. - No Civil Court shall grant injunction or make any order for any other relief, against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer.]

13. Presumption as to orders. - Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872 (1 of 1872).

14. Burden of proof in certain cases. - Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

15. Protection of action taken under Act. - (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

[15-A. Prosecution of public servants. - Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no Court shall take cognizance of such offence except with the previous sanction

(a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;

(b) of the State Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State.]

16. Repeals and savings. - (1) The following laws are hereby repealed

(a) the Essential Commodities Ordinance, 1955 (1 of 1955);

(b) any other law in force in any State immediately before the commencement of this Act insofar as such law controls or authorizes the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

(2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act shall, insofar as such order may be made under this Act, be deemed to be made under this Act and continue in force, and accordingly any appointment made, licence or permit granted or direction issued under any such order and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction issued under this Act.

(3) The provision of sub-section (2) shall be without prejudice to the provision contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.

[THE SCHEDULE

(See section 2-A)

ESSENTIAL COMMODITIES

(1) drugs.

Explanation. . - For the purposes of this Schedule, drugs has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);

(2) fertilizer, whether inorganic, organic or mixed;

(3) foodstuffs, including edible oilseeds and oils;

(4) hank yarn made wholly from cotton;

(5) petroleum and petroleum products;

(6) raw jute and jute textiles;

(7)(i) seeds of food-crops and seeds of fruits and vegetables;

(ii) seeds of cattle fodder; and

(iii) jute seeds.]