4.1. **International Background**

The Law for control over the production, supply and distribution, etc., in India was enacted following the English Law for the control and maintenance of reserves of certain essential commodities to face unforeseen and emergent situations, "The Essential Commodities Reserves Act, 1938"\(^63\), which was enacted on 29\(^{th}\) July, 1938, in England.

4.2. **National Background**

In continuation, the Government of India (British India) in the year 1939 made certain rules for the control over the production, supply and distribution of certain essential commodities under the Defence of India Act. After Defence of India Act ceased to have force on 30\(^{th}\) September, 1946, it was considered necessary that control in respect of certain essential commodities in India should continue in the interests of the general public. Hence, the essential supplies (temporary powers) ordinance, XVIII of 1946, was promulgated by which certain provisions of the Defence of India Rules were continued such as "..Rule 81(2) of Defence of India Rules, has continued to be in force."\(^64\). This ordinance was, subsequently, replaced by the Essential supplies (Temporary Powers) Act 1946 (Act No.XXIV of 1946).

4.2.1. **Constitutional Background**

By virtue of provisions of Section 1(3) the life of the Essential Supplies (Temporary Powers) Act 1946, was limited to 1\(^{st}\) April, 1947, but, the operation of the Act was prolonged up to 1\(^{st}\) April 1948 by effect of notification No.7-WL(1)-47,

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\(^63\) Tables of Legislative effects, UK.
\(^64\) Bharat Coking Coal Ltd. v. State A.I.R.1989 Pat.335
published the Gazette of India, dated 8 March, 1947. Under certain resolutions of the Constituent Assembly passed in 1948 and 1949 and by the Adaptation of Laws order 1950, the operation of the Act was further extended to different periods from time to time. The life of the Act was finally limited to 26th January, 1955 by Act No.LXV of 1952, and on that date the Essential Supplies (Temporary Powers) Act, 1946, expired.

Since, it was considered necessary in public interest that the Central Government should continue to exercise control over the production, supply and distribution, etc. of certain essential commodities, the need of a permanent legislation on the subject was felt and for this purpose certain amendments were required to be made in the constitution. The constitution (Third Amendment) Act made the required amendments in Entry 33 of List 3 in the Seventh Schedule to the constitution to enable the Parliament to enact this required legislation. The Essential Commodities Ordinance, 1 of 1955 was promulgated which came into force on 21 Jan. 1955. This ordinance was subsequently replaced by the present Act, namely, the Essential Commodities Act, 1955 and was published in the Gazette of India, Extraordinary in Part II, Section 1, dated 2nd April, 1955.

4.3. Legislative Intent

The Act is intended to provide for the Control of the production, supply and distribution of, and trade and commerce in, certain commodities essential for human beings in the interests of the general public. It deals principally with the following subjects:

1. Control of production, supply and distribution of essential commodities, vide Section 3.
2. Conferment of power of imposition of duties on State Government, vide Section 4, and Central Government's power
to delegate its powers to the State Governments or its officers, vide Section 5.

3. Removal of difficulties arising by reason of inconsistency of any order made under Section 3 of this Act with other enactments, vide Section 6.

4. Securing obedience to provision of orders made and directions issued under the Act by making the contravention and attempt to contravene such provisions, orders and directions, punishable as offence, vide Section 7. Attempts and abetment of offences, vide Section 8; false statements, vide Section 9; and offences by companies, vide Section 10.

5. Provision regarding cognizance of offences under this Act, vide Section 11, and special provisions regarding fine vide Section 12.

6. Provision regarding summary trials, vide Section 12-A which was inserted by the Essential commodities (Amndt.) Act 47 of 1964.

7. Provision in respect of Judicial Presumption as regards an order purporting to have been made and signed by an authority in exercise of any power conferred by or under this Act, vide Section 13. Burden of proof in certain cases, vide Section 14.

8. Provision for protection of action taken under this Act by person or by the Government, vide Section 15.

9. Provision for repealing the essential commodities ordinance 1955, and such other analogous laws in force in any state and consequences from the repeal.
The Act makes no specific provision creating a bar to the questioning of orders made there under in any court. Also the Act does not specifically confer upon the Government any rule-making powers.

The Act follows the provisions contained in the Essential supplies (Temporary Powers) Act 1946, but the penalty clause has been simplified and some other provisions have been omitted as unnecessary. It includes within the definition of 'essential commodities' those commodities which had to be left out by reason of lack of legislative power.

This Act enables the Government whenever there is need for or it is expedient to exercise powers under the Act. But the Act by itself is not an emergency provision. It only arms the Government with powers to meet certain emergencies, and difficulties in the economic trade and commerce fronts, difficulties in the production and distribution of essential commodities including food grains. "....The dominant purpose of the Act is to secure equitable distribution and availability at fair price of specified commodities...."65

4.4. **Important Amendments to Essential Commodities Act, 1955**

The short title given to the Principal Act is 'The Essential Commodities Act 1955'. It received the assent of the President on April 1, 1955, and was published in the *Gazette of India, Extraordinary*, dated March 2, 1955, part II, Sec. 2.

Due to latent defects as well as change in the circumstances the Act has been amended several times by the following Amending Acts:

2. The Essential Commodities (Amendment) Act 13 of 1957.

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3. The Essential Commodities (Second Amendment) Act 28 of 1957.
5. The Essential Commodities (Amendment) Act 47 of 1964.
8. The Essential Commodities (Second Amendment) Act 36 of 1967.

**Important Amendments**

The following major and substantial amendments are analysed below:


   In 1974, also in this section 6A in the opening paragraph for the words 'may order confiscation of the essential commodity so seized', the following words were substituted retrospectively with effect from 22-6-1974 by Sec. 4 of the "Essential Commodities Amendment Act, 1974"; viz., "may order confiscation of—

   (d) the essential commodity so seized;
(e) any package, covering or receptacle in which such essential commodity is found; and

(f) any animal, vehicle, vessel or other conveyance used in carrying — Such essential commodity. ⁵⁶


In 1976, in the section the following amendments were made on 3-9-1976 by Section 4 of the Essential Commodities Amendment Act 92 of 1976.

(I) Section 6-A of the principal Act has been renumbered as sub-section (1) thereof and in sub-section (1), as so renumbered—

(c) for the words 'it may be produced, without any unreasonable delay, before', the words 'a report of such seizure shall, without unreasonable delay, be made to' has been substituted, and for the words 'if satisfied', the words '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' has been substituted;

(d) after the proviso, the following proviso has been inserted, namely:
Provided further that in the case of any animal, vehicle, vessel or such 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;

(II) after sub-section (1) as so renumbered, sub-sections (2) and (3) have been inserted, namely:

⁵⁶ Act 30 of 1974
(a) in sub-section (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 controller's price, if any, fixed for such essential commodity under his 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;

Provided that in case of food-grains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for retail sale of such food-grains to the public.

(b) In sub-section (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—

(i) where no order of confiscation is ultimately passed by the Collector;

(ii) where an order passed on appeal under sub-section (1) of Section 6-C so requires; or

(iii) 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 thereof, or the person from whom it is seized.
This section makes necessary provisions for the confiscation of essential commodity seized in pursuance of an order made under Section 3 of the Principal Act and in relation, thereto.

The Collector of the District or the Presidency town in which such essential commodity is seized is empowered and may order its confiscation if he is satisfied that there has been a contravention of such order. But, no order of confiscation shall be made under this section if the seized essential commodity has been produced by the producer without prejudice to any action which may be taken under any other provision of this Act.

Also, since, "the wider powers of confiscation and disposal of property have been conferred by Sections 517 and 523 (new Sections 452 and 457 of 1973 Code) of Criminal Procedure Code these powers must be regarded as impliedly limited by the specific provision of Sec. 6-A of the Act. The rule is that where a statute specifies a particular mode of enforcing a new obligation created by it, such obligation can as a general rule be enforced in no other manner than that provided by the statute"67


The Prevention Of Blackmarketing And Maintenance Of Supplies Of Essential Commodities, Act No. 7 Of 1980, is an Act to provide for detention in certain cases for the purpose of prevention of blackmarketing and other illegal activities and maintenance of supplies of essential commodities to the community and for matters connected therewith was required to supplement the achievement of objects of the essential commodities law which covers to prevent blackmarketing activities clandestinely organized and carried on as such. Therefore, "the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980,

67 Purshottam Devji v. Emperor 46 Bom LR 449: AIR 1944 Bom 247: ILR 1944 Bom 429
was enacted to check large scale blackmarketing activities as normal machinery was found unequal to the task.\footnote{Didar Singh v. State of Punjab 1982 Cr LJ 1379.}

The object and reasons of the original Act 7 of 1980 which was promulgated on the 5th of October 1979 was to deal effectively with malpractices like black-marketing, hoarding, adulteration, profiteering, and to arrest the resultant sharp rise in prices of essential commodities by providing for preventive detention of persons indulging and involved in these practices.

\textit{(The Essential Commodities Act, 1955 contains comprehensive provisions for the regulation of production, supply, distribution and trade and commerce in essential commodities. The penal provisions in the act were made more stringent in accordance with the recommendation of the Law Commission in their forty seventh reports.)}

Nevertheless, it was felt that a separate supplemental legislation be enacted as the same provisions in the Act of 1955 were not adequate to deal with the needs of the changing situation.

The Ordinance recognized preventive detention as a necessary evil and accordingly sought to provide for various safeguards to avoid scope for possible abuse and misuse of the powers thereunder. The grounds on which a person could be detained under the Ordinance have been clearly spelled out. However, "a person can be detained thereunder only with a view to preventing him from acting in any manner prejudicial in the maintenance of supplies of commodities essential to the community. The expression 'acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community' has also been defined, there under. The Constitutional safeguards embodied in Article 22 of the Indian Constitution.}
Constitution have been provided for and the maximum period of detention provided is only for a period of six months. The Act has been suitably amended further by the following amending Acts, object being to prevent the related offences:
