The identification and empirical study of the views and suggestions of connected public authorities and other stakeholders, such as, dealers and the general public/ beneficiaries for efficient and effective control over the production, supply and distribution, etc., is an important ingredient in the study of the essential commodity law.

7.1. IDENTIFICATION OF STAKEHOLDERS

The following stakeholders have been identified on the basis of involvement, controlling interest, responsibility and accountability as duty bound, benefit enjoyed and targeted subsidy beneficiary, taxpayers, etc. whose views and suggestions have been analysed for the purpose of the study.

<table>
<thead>
<tr>
<th>STAKEHOLDERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Connected Public Authorities;</td>
</tr>
<tr>
<td>2. Wholesale Dealers/ Companies;</td>
</tr>
<tr>
<td>3. Retailers (Fair price shop owners, diesel &amp; domestic gas outlets);</td>
</tr>
<tr>
<td>4. Targeted Beneficiaries (BPL, APL, etc. consumers).</td>
</tr>
<tr>
<td>5. General public (Non targeted, open market buyers)</td>
</tr>
</tbody>
</table>

7.2. ANALYSIS OF VIEWS OF THE CONNECTED PUBLIC AUTHORITIES

The connected public authorities are the persons vital to the implementation of the Law and its execution. As discussed earlier, any Law, for achievement of
its goal the means to such achievement is the executive administrative machinery.

Upon analysis of the replies/ views to questions/ discussion*(see appendix for interview schedule) the various connected public authorities during course of interview and discussion, it is observed that:

a) In 2009, 2533 persons had been prosecuted and 37 convicted. In 2010 as on August 25, 3101 persons having been prosecuted and 39 convicted, which is abysmally low raising doubts about effectiveness of the Law, time and again.

Over the three years 2006-2008 , State and Union Territory governments prosecuted 14,541 persons under the provisions of EC Act, 1955 and secured conviction in 2,310 cases i.e. only 15.88% which was far from being satisfactory

Table 1*: Prosecution in India under Essential Commodities Act

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecuted</th>
<th>Convicted</th>
<th>Conviction %</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>14,541</td>
<td>2310</td>
<td>15.88%</td>
</tr>
<tr>
<td>2009</td>
<td>2533</td>
<td>37</td>
<td>1.46%</td>
</tr>
<tr>
<td>2010</td>
<td>3101</td>
<td>39</td>
<td>1.26%</td>
</tr>
</tbody>
</table>
b) SUGGESTIONS of Connected Authorities

i) Various public authorities are of the view and feel that in the absence of a reasonable and sustainable rate of return on investment and also in the absence of a fixed remuneration the dealers are resorting to various forms of blackmarketing.

ii) Some public authorities are of the view in particular that the 1% spillage allowed in case of kerosene oil is only available to the stockist and not the retailer who is actually suffering a spillage due to retailing in small quantities. The spillage of 1% per year is very large, say 500 litres, if the stockist handles about 50,000 litres. This kerosene goes to the open market for blackmarketing, adulteration of diesel and other oil and lubricants.

iii) The sub-wholesale seller along with the retailer on the other hand in the absence of any spillage margin actually suffering spillage resorts to illegal practices like giving less quantity or diverting for selling at a higher rate in the open market in the process. Also, the handling
costs of the foodstuffs, etc. has risen forcing the retailers to resort to illegal practices to compensate the loss.

iv) Some of the authorities support increasing handling costs paid by government to retailers and the passing of part of spillage percentage to the lowest traders also.

v) Elimination of Structural Units/ Middlemen such as Storage agents and sub-whole sellers has also been suggested as a reformatory measure in the supply and distribution system.

vi) Recently, Parliament’s estimates committee asked the government to come out expeditiously with a new legislation for controlling the retail prices of essential commodities (Foodstuffs) such as rice, wheat, pulses, edible oils, sugar, milk and vegetables due to rise in handling costs.

vii) Public authorities in Odisha state have suggested the increase in the number of beneficiaries per retailer which is at present 100 - 300 to 500 per retailer so that the increase in volume of trade would compensate the traders to get a reasonable rate of return on their investment.

C) Table 2 * The status of prosecutions under section 6A and section 7 of the Essential Commodities Act, in Odisha are given below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Cases</th>
<th>Fines</th>
<th>Commissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>180</td>
<td>0</td>
<td>Nil</td>
<td>90</td>
<td>-</td>
</tr>
<tr>
<td>1999</td>
<td>300</td>
<td>2</td>
<td>0.66%</td>
<td>170</td>
<td>260</td>
</tr>
<tr>
<td>2000</td>
<td>100</td>
<td>9</td>
<td>9%</td>
<td>73</td>
<td>333</td>
</tr>
<tr>
<td>2001</td>
<td>230</td>
<td>10</td>
<td>4.34%</td>
<td>131</td>
<td>464</td>
</tr>
</tbody>
</table>

*Annual Reports of the Department of Food and Civil Supplies, Government of Odisha AND Field survey.
i) The cumulative pending litigation numbers to 464 out of 630 cases initiated in the last 3 years in the State of Odisha till March 2011, i.e., more than 73% and the number of acquittal/withdrawal of cases is 365 i.e. 57.93%.

ii) This lower number of convictions is due to the lack of concrete evidence and weak cases which has sufficed to the present scenario for obvious reasons of bribery, corruption and weak vigilance machinery.

iii) Card holder beneficiaries in rural areas being illiterate and not able enough to use the alternate grievance mechanism such as Consumer forums to make complaints due to inconvenience and geographical distance, making the case stronger to strengthen the existing system of complaints as per departmental mechanism and vigilance squads as suggested by some connected authorities.

iv) Pending litigation has voluminously risen due to the lack of executive time and non-establishment of special officers to try confiscation cases except the Collector who being the hub of executive in District administration can devote very less time for the purpose in the light of cluster of duties assigned to him.
v) As suggested for prosecution for offences also an exclusive set of Fast track Courts for the purpose should be established to expedite matters for speedy trial and disposal of cases keeping in mind the importance of the matter.

Hence, it is of considerable importance for the authorities to issue control orders and make policy notifications to accommodate the above views/suggestions of the stakeholders for improvement in the efficiency of control over production, supply and distribution, etc., in public interest under the Essential Commodities Act, 1955, which confers only on the Central Government the power of issuing notified orders which may provide for regulation or prohibition in the matter of production, supply and distribution of any essential commodities. [It lays down that an order made under Sec. 3 may confer powers and impose duties upon the Central or State Government of officers and authorities of the Central or State Government, and may contain directions to any State Government or to officers and authorities thereof, as to the exercise of 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][227].

So also under Section 4 which declares the policy of the law and the legal principles that are to control any given cases and have provided a standard to guide officials or the body in power to execute the law. The provisions of the section sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out be delegating that power to a subordinate authority within the framework of that policy as observed under the various decisions of the Courts (See chapter 5).

Central Government to the State Government or officers and authorities, thereof, through notified orders under Section 3 by the Central Government which is authorised with the power of issuing notified orders which may provide for regulation of prohibition in the matter of production, supply and distribution of the essential commodities.

Again, the term 'notified order' is wide enough to cover special as well as general orders relating to matters specified in the Section. As held by the Courts, "the notified orders intended to be made by the Central Government are legislative orders and not executive orders".

Therefore, as suggested by some connected public executives regarding indisputable powers of the executive for making control orders as well as delegating such power to subordinate authorities for making notifications, decision makers must consider new concepts for price control to achieve administrative excellence through effective methods in executing the implementation of the Act like:

(a) Dissemination of futures prices of agricultural commodities which have been identified as an important activity for control of food stuffs. The Forward Markets Commission, the regulator for commodity futures trading may be given the responsibility for implementing the Price Dissemination Project with the objective of disseminating prices (both spot and futures) of agricultural commodities among all stakeholders of the agricultural sector.

(b) Dissemination of futures prices will serve the following objectives:

\[ \text{Thakore Lal Chaturbhuj Dalal v. State of Bombay AIR 1959 Bom 511} \]
(i) The futures prices quoted at the Exchanges can provide useful inputs to the farmers for decision making during pre-sowing and post harvest period.

(ii) Information of prices can improve the bargaining capacity of the farmers and reduce the monopoly of the middlemen at the Agricultural Produce Marketing Committees (APMCS) s and rural Mandis. This would enable farmers to get best possible prices for their produce.

(c) Dissemination of the Futures Prices would go a long way in improving farmers’ awareness and the existence of the futures markets.

(d) The Forward Markets should consider the following modes of dissemination:

(i) Placement of price ticker boards:

(a) Placement of price ticker boards through AGMARKNET all of which are already networked under the AGMARKNET project around 950 mandis/APMCs;

(b) Placement of around 300 price ticker boards at rural branches of Post offices would come handy.

(ii) Price dissemination activity by National Commodity Exchanges:

(a) The National exchanges should independently take up the task of placing price ticker boards displaying futures prices discovered in their exchanges at prominent centres. The three National Exchanges should independently and in collaboration with each
other, place price ticker boards in 514 broking locations spread over 18 states.

(b) Dissemination of future prices should also be done through Doordarshan as well as other business TV channels.

(c) The Exchanges should be providing price details to the National Channel of Doordarshan and price tickers may at present be displayed in the National News telecast.

(iii) A Price Monitoring Cell must be established for Monitoring of daily prices of essential commodities from all States along with:

(a) Monitoring of weekly retail and wholesale prices of essential commodities from centres.

(b) Preparation of Monthly bulletin on prices, production, etc.

(c) A Public complaints system must be set in all States with sub-centres in block/district level.

(d) Matters relating to production, export/import of essential commodities may be coordinated with Export-Import Policy with Market intervention as and when required.

(e) Collection of information on international prices, production, exports, imports, levies etc. may be done regularly.

(f) Examination of reports on Rabi and Kharif crops forwarded by Ministry of Agriculture and Buffer
Stocking Policy received from D/o Food and P.D. may be done for the above purpose.

(g) WTO/GATTs related matters for guidance to ICRIER in study on "FDI in Retail Sector" for strengthening of infrastructure of Price Monitoring Cells of Department of Food & Civil Supplies of States/U.Ts. with note for Crop Weather watch group must be done.

(h) Office Automation (computerization and internet facility), Preparation & Implementation of I.T. plan for whole Department.

(i) Coordination for matters related to direct selling and internal trade other than commodity exchanges must be done by the Central Government.

For efficient essential commodity regulation and enforcement the following suggestions of the officers of the Central Government were advanced on the administrative side regarding the Law and its implementation:

(a) For administration of the Essential Commodities Act, 1955, a review of its provisions and other policy matters must be done periodically.

(b) Training and education workshops for the concerned authorized officers of the Central, State/UT Governments on Interpretation, provisions and amendments to the Essential Commodities Law must be done periodically.

(c) Periodic review for Addition/Deletion of items declared as essential commodities under the Essential Commodities Act.

(d) Periodic review of Delegation of powers to States/UTs under the Essential Commodities Act.
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(c) Periodic review for Addition/Deletion of items declared as essential commodities under the Essential Commodities Act.

(d) Periodic review of Delegation of powers to States/UTs under the Essential Commodities Act.
(e) Concurrence of the Central Government to Control Orders issued by the States/UTs.

(f) Monitoring of information on implementation of Control Orders issued by States/UTs on a monthly basis.

(g) Necessary action on the Court Cases filed under the Essential Commodities Act.

(h) Scrutiny and examination of Control Orders and amendments to Control Orders issued or proposed to be issued by States/UTs under the.

(i) State Legislation proposals should be referred for comments/advice.


(k) Training workshops on Interpretation of provisions of along with monitoring of the implementation of the by the State Governments/UTs and supply of information relating to the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, on a monthly basis.

(l) Examination of reports & Grounds of detention and consideration of the Representations from the detenues under the Act.

(m) Advice and review of necessary action on Court Cases filed by the detenues.

(n) Periodic issue of guidelines and instructions to State Governments/UTs for implementation of the Essential Commodities Act & Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.
(o) Feedback system for representations from Public and Trade Associations etc., including, Parliament questions relating to both Acts.

(p) Periodic instructions and returns to the grassroot centres.

(q) Status of Essential Commodities with the annual rate of inflation in essential commodities both in terms of the Wholesale and the Consumer price index for industrial workers.

(r) Domestic availability and prices of essential commodities.

(s) Factual price rise in this group with wholesale prices of rice, wheat, sugar, salt, some coarse cereals, urad and tea compared with previous/last year.

(t) Domestic availability of commodities like pulses and edible oils, where domestic supply falls short of domestic demand, for supplementation by imports to ensure availability of these essential commodities at reasonable prices.

Bribery and Corruption in distribution process:

Some of the public authorities on conditions of anonymity have also acknowledged that there is rampant bribery and corruption in the supply and distribution system in the vigilance system as well in the operating circles. In practice only if surprise checks by squads of other circles takes place, a case is registered formally.
7.3. **Analysis of Views of the Retailers, dealers and other stakeholders**

No administrative machinery implementing such fundamental function of Government can be apprised without feedback from or taking into account the views of the various stakeholders such as the dealers, retailers and beneficiaries with a view to secure the interests of the general public.

**(a) Dealers and Licence holders**

During the course of discussion/interview*(see appendix for interview schedule)* of as many as 19 dealers and retailers randomly selected, many of the traders are of the view that the Act has outlived its purpose and in a liberalized economy, there is no need for regulating production, distribution and supply of essentials commodities. The government must only monitor activities to subserve the purpose. Executive lethargy and illegal demands of the connected public authorities and people representatives have made retailing and dealers’ zeal is at its lowest ebb.

The Major Suggestions of Traders (Dealers and Retailers) in this regard include:

a) At present all offences and violation of the provision of the Act is viewed seriously and are made cognizable and non-bailable. But, a distinction must be made between non-bailable and bailable offences.

b) Various traders/associations have demanded that all offences be made bailable.

c) The best part of the demands relates to punishment to erring officials under the Act.
d) The law should provide that officer, if proved guilty in a court of law, be punished for harassing the traders.

e) The traders have complained of being unnecessarily harassed by the officials for obvious (demand of illegal gratification) reasons.

f) Also officials and controlling body members always ask for free commodities.

g) Some licence holders have proposed that the power of the officials under the Act be reduced and immunity be withdrawn.

h) Similarly some dealers and licence holders have demanded that in future the officials be made to take the permission of the First Class Magistrate or its equivalent before making entry, examination or seizure of commodities from a trader.

i) In addition, some have suggested that the official be made to produce a copy of the order of permission taken from the Magistrate.

j) The traders have also proposed to reduce the period of imprisonment from 7 to 2 years and also reduction in the amount of fine by almost 50 per cent.

k) Nevertheless, the traders have welcomed, that, the Act contains positive aspects and the orders made herewith contain provisions providing modes of appeal and procedural safeguards from unlawful suspension and cancellation of licenses of dealers.

(b) **Views of Companies/Corporate Traders**

Various Companies in the retail industry in the wake of policy for allowing FDI in retail during course of interview have demanded that:
a) The provisions of the Principal Act may not be made applicable and they be allowed to stock larger quantities of commodities than is limited under the control orders.

b) They have made representations about such requirement to the Central Government and in response to their representation the Ministry of Finance has asked for views of the various ministries administering those commodities considering the above proposals.

c) The fertilizers production, supply and distribution and price control has been subject to competition as far as Private companies and Government undertakings are concerned.

d) The government endeavours are done mainly through IFFCO which primarily operates through cooperative societies and

   i) Has also some adopted villages especially in the Nayagarh district area of the State of Odisha for utilization of budgetary subsidies provided by the government.

   ii) The officials of IFFCO are of the view that in the face of competition they are unable to develop as the subsidies are utilized wholly for distribution.

   iii) They are of the view that partial deregulation may be considered in the case of fertilizers.

(C) Interview of Beneficiaries (Card Holders & Non Card Holders)

The general public and beneficiaries are the target for whose interest the law of essential commodities was enacted by parliament. For the purpose of the study they were selected randomly and were interviewed*(see appendix for
interview schedule) for simplicity, in their local language. The total number of persons interviewed was 68 including 18 women.

The interview/discussions are very useful for the purpose of the study and have brought out some grave and serious facts about the problems faced by the beneficiaries in the procurement, supply and distribution, etc., of essential commodities such as foodstuffs, domestic gas, etc. Some valuable reformatory suggestions have also been specified:

Table 3*

<table>
<thead>
<tr>
<th></th>
<th>Beneficiary, not in need of assistance</th>
<th>Beneficiary, in need of assistance</th>
<th>Other, not in need of assistance</th>
<th>Other, in need of assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foodstuffs</td>
<td>48 (70.59%)</td>
<td>21 (30.88%)</td>
<td>45 (66.18%)</td>
<td>28 (41.18%)</td>
</tr>
<tr>
<td>Kerosene</td>
<td>21 (30.88%)</td>
<td>18 (26.47%)</td>
<td>45 (66.18%)</td>
<td>07 (10.30%)</td>
</tr>
<tr>
<td>Domestic Gas</td>
<td>02 (2.94%)</td>
<td>02 (2.94%)</td>
<td>21 (30.88%)</td>
<td>02 (2.94%)</td>
</tr>
</tbody>
</table>

*Field Survey (Interview and discussion)
a) 30.88 percent, i.e., 21 of the 68 persons interviewed have mentioned that malpractices in scale and a huge 70.59 percent, i.e., 48 persons, have cited defects in quality of the commodities available in the fair price shops;

b) 45 persons (66.18 %) for food stuffs & kerosene and 21 persons (30.88 %) for domestic gas have cited the problem of deliberate harassment by dealers regarding arrival date / availability of commodities for card holders so that if the card holder missed the due date -which changes according to the whims and fancies of the dealer- the quota of his commodities can be diverted to the open market by the dealer for higher price than the declared price as a regular feature.

c) Distribution of lesser quantity of foodstuffs than the eligibility quota and carry forward of the quota into periodic installments have been pointed out by many beneficiary card holders numbering
45(66.18%).

d) Large scale adulteration and blackmarketing of commodities have been complained but no satisfactory action has been taken by the authorities.

e) Delay or no redressal of complaints lodged is also a common phenomenon in the interior areas/ Districts in the state of Odisha as well as, other States as alleged by all persons.

f) All persons have urged very stringent corporal punishments for the dealers and officials engaged in the corrupt practices.

✓ ✓ However, all respondents have exhibited overall satisfaction on the existing structural system of the FPS and gas outlets.

Analysis of the major suggestions results comprises:

1. The prices of items distributed through FPS should be lower than the market rates;
2. Quantity of each of kerosene and sugar distributed should be increased;
3. Quantity of rice and wheat distributed should be increased;
4. There has to be provision to get the items in installments;
5. As a corollary of (iv), the items should be distributed throughout the month;
6. Quality of items should improve;
7. FPS should be located inside the village/ area;
8. Account of items of supply- distribution – lifting by consumer should be strictly audited and departmental grievance/ complaints redressal system strengthened.
9. Any illegal activity discovered should be severely punished with including the government officials involved in it.
It is also observed that control of essential commodities must also be in the view of globalization and free trade be allowed as this will boost the economy as well as secure equitable distribution of the commodities in the light of bumper production of food grains for the last few years in the country which can be bartered for oil, medicines and fertilizers from other countries as has been suggested by some stakeholders.