CONCLUSION WITH SUGGESTIONS

9.1 CONCLUSION

As already discussed in the foregoing chapters, with the passage of time the economic disaster of mal-distribution of essential commodities has attained wider dimensions and greater concerns, which require discharge of higher responsibilities by all the agencies. In terms of Article 19 of the Constitution, all the citizens are entitled to greater extent of multi-utility essential commodities, as their sufferings are in no way, directly or indirectly, attributable to them. It is, primarily and undoubtedly, the negligence on the part of the Central Government that has resulted in uncontrolled production and inequitable distribution, causing irreversible damage to the health of not only the persons affected but even the children who are still to be born.

The Essential Commodities Act, 1955, enacted by Parliament for control over the production, supply, distribution, etc. of essential commodities, to maintain or increasing supplies, to secure equitable distribution and availability of commodities at fair price in the interests of the general public.

Exercising such powers delegated under the Act, various Ministries/Departments of the Central Government, State Governments and UT Administrations are issuing Control and licensing Orders for regulating production/distribution/quality/price/movement/trade, etc., of the commodities administered by them such as medicines, foodgrains, edible oils, pulses, kerosene, sugar, fertilizers, diesel, etc., respectively.

The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, suffices and suffices the Essential Commodities Act, 1955, in the prevention of illegal activities and offences, by
way of preventive detention, is a powerful tool in the hands of the State Governments to overcome hurdles in the supply and distribution process proactively for achievement of the object of the Law.

Hence, it is imperative that the Central Government should regularly monitor its own action, as well as, action taken by State Governments/ UT Administrations for the control over the production, supply and distribution, etc., of essential commodities in the implementation of the provisions of the Essential Commodities Act, 1955, for the achievement of the statutory as well as Constitutional goal of commodity control and Distributive Justice in Indian society.

The functioning, implementation and monitoring system must be streamlined for the reduction and prevention of related offences to maintain and ensure smooth flow of supplies.

The items declared as essential commodities under the Essential Commodities Act, 1955, at present containing 15 items, needs to be reviewed regularly, in the light of liberalized economic policies, as well as, increased demand, in consultation with the Ministries/Departments administering them, inclusion, as well as, exclusion for control and decontrol, respectively, in the wake of the recent astronomical and volatile price rise which the Government is unable to control along with their sufficient availability, being the need of the hour, in the expected effective manner.

However, in its such endeavour, the Central Government completely fails in exercising properly and efficiently the power conferred on it, by virtue of the Law, to the control the production, supply and distribution, etc., of the essential commodities, to maintain smooth flow of supplies and prevention of artificially created shortages, hoarding, black marketing activities etc. to ensure their
equitable distribution and availability at fair prices for welfare of the general public.

The failure of the Central Government is a consequence of its failure to regulate by licenses, permits or otherwise, the production or manufacture of the essential commodities, for bringing under cultivation any waste or arable land whether appurtenant to a building or not for the growing thereon, of d crops generally or of specified food crops, for otherwise maintaining or increasing the cultivation of food crops generally or of specified food crops for controlling the price at which any essential commodity may be bought or sold, the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity, for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale or for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling of any essential commodity to sell the whole or a specified part of quantity held in stock or produced or received by him or 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, stock for the optimum use of the available resources for sustainable and equitable development.

Failure is also observed in preventing unethical and illegal trade practices like adulteration and blackmarketing. The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities, Act, 1980, being utilised by the State Governments to detain persons whose activities are found prejudicial to the maintenance of supplies of commodities essential to the community, needs prudent application and coordinated efforts.
The area of the control orders has been increasing and widening steadily over the years. The girth of the powers conferred by Section 3 on the executive is remarkable. Though the section has survived the charge of "excessive delegation", the perimeter of the powers are not specified, neither the safeguard to the exercise of such power is set. So also, the piecemeal amendments to the control orders are a concern for administrative efficiency in the absence of amendments themselves to prescribe as a guide to regulate administrative action.

Some people have become so skeptical that they advocate the complete withdrawal of the significant legislation so that the mechanism of competition brings prices to stabilize.

The Law has come under much scrutiny and criticism over the last few years prompting wholesale traders to observe a nationwide bundh in order to protest against the decision of the government to extend the life of the Essential Commodities Act, in the year 2006.

The traders were of the opinion 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 executive failure in the regulation, by licenses, permits or otherwise the production/ manufacture, supply and distribution, etc., in a prudent manner of the essential commodities, as well as, in controlling the price at which any essential commodity may be bought or sold.

However, the necessity of retaining the Act of 1955, arming the Central and State governments with drastic powers of interference in the name of regulation of trade and commerce and supply and distribution of essential commodities by issuance of control orders of varied nature is an indication of
what would otherwise result in hoarding and profiteering at some places and famine and frustration at others.

Thus, the spectre of future fears, along with, rapidly changing socio-economic conditions in India is adequate justification for discretionary powers conferred on the executive, but, there is need for providing adequate checks and safeguards to prevent abuse of power. Hence proper balance must be struck between administrative convenience, individual freedom and commodity control to preserve the democratic objective of welfare of the people and society because of the extensive complexity, range of problems and geographical hurdles involved in India.

Competitive market is no longer a trusted arena for holding the price line and hence, State must assume the responsibility of ensuring equitable distribution and supply of essential commodities at fair price. This is the object of the Act and there can be nothing far from true that this object has been achieved.

The Act provides for proper diversification of powers for control over the production, supply and distribution, etc., of essential commodities through delegation of powers for issue of control orders which are the mechanism for keeping abreast of the developing situation in a fast growing economy beset with the evils of hoarding, profiteering and black marketing and other white collar crimes such as tax evasion and illegal profits necessitates to be dealt with effectively by adopting a system of checks and balances and regulation through licenses needs periodic review in the light of the observations of the Courts and made flexible to accommodate, along with the interests of the beneficiaries, of other stakeholders such as dealers, license holders, etc., in modifying and streamlining the control over the essential commodities in the interest of the nation.
"Power Corrupts, absolute power corrupts absolutely ", but, it is commendable that the Act and the orders made herewith contain provisions for modes of appeal and procedural safeguards for unlawful suspension and cancellation of licenses of dealers.

The separate legislation, the Prevention of Black Marketing and maintenance of Supplies of Essential Commodities Act, 1980, which comes handy for the prevention of offences, needs effective implementation as “no chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white-collar criminals are unlikely to be dissuaded by the gentle probationary process and urges stringent penalty because it is done neither as a casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive - not easily humanised by the therapeutic probationary measure............

........It is not without significance that the 47th report of the Law Commission of India has recommended the exclusion of the Probation of offenders Act to social and economic offences like essential commodities by suitable amendments...." 290 is ample justification for stricter, dedicated implementation of the Law.

To deter the intending offender punishments must be made more stringent and corporal for ensuring the budgetary subsidies reach the intended beneficiaries instead of being "..siphoned off..,"291 to the open market and illegally disposed.

290 M/S Precious Oil Corp & Otrs. v. State of Assam, SC dt. 05.02.2009
Deemed ancillary legislative powers are bestowed on the executive within the Act and it is true that where the Legislature has conferred any power, it must be deemed to have also granted any other power, without which that power cannot be effectively exercised as enunciated in *Halsbury’s Laws of England,*\(^2\) that,

"A duty imposed or a power granted by Parliament carries with it the power necessary for its performance or execution. Similarly, an authority given by Statute to do certain work authorises the doing not only of all things absolutely necessary for its execution, but of all things reasonably necessary."

Maxwell in his book, *Interpretation of Statutes,*\(^3\) has also observed that,

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

As an illustration, the learned author has stated that, "an Act which authorises the making of by-laws, impliedly authorises the annexation of a reasonable pecuniary penalty for their infringement, recoverable (in the absence of other provision) by action or distress."

At p. 361\(^4\), the learned author has observed that, "in the same way, when powers, privileges, or property are granted by statute, everything indispensable to their exercise or enjoyment is impliedly granted. . . ."

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\(^2\) *HALSBURY’S LAWS OF ENGLAND,* Vol. 31, para. 642 (1938th Edn.)

\(^3\) *INTERPRETATION OF STATUTES, MAXWELL,* Edn. 9, p. 360

\(^4\) *INTERPRETATION OF STATUTES, MAXWELL,* Edn. 9, p. 361.
Nevertheless, exercise of such inherent powers should be in a reasonable manner so as not to infringe the fundamental rights and human values granted by the Constitution (basic) law of India and keeping the democratic principles in mind to maintain a judicious balance in exercise of delegated powers and its execution and achievement of the object of the Law of essential commodities and the fulfillment of the intention of the legislature behind the enactments.

Last, but not the least, the motivation level of the connected public authorities, especially, the vigilance and prosecution executives are at the lowest ebb. The confession that it is near to impossible to eradicate bribery and corruption in the present supply and distribution setup (see chapter 7) is a grave matter which needs introspection by the executive and necessitates genuine political will, has to be dealt with dedicatedly over a period of time, otherwise it will be hard to realize the benefits of an important Law which facilitates such prime and essential function of the Government.

9.2. TEST OF HYPOTHESIS:

9.2.1. Test of Hypothesis no. 1 improper implementation of Law, orders and circulars of Supply and Distribution have resulted in maldistribution - PROVED.

The efficiency and effectiveness of the executive administrative machinery is the means towards achieving the legislative goal of any statutory law.

However, "the ever increasing abuse of power by public authorities and interference with life and liberty of the citizens arbitrarily, coupled with increasing emphasis on human liberty resulted in more pragmatic approach to the individual’s dignity, his life and liberty and carving out an exception by the Court where the abuse of public power was violative of the constitutional guarantee."
Such infringements have been held to be wrong in public law which do not brook any barrier.  

The overriding effect of the delegated powers under the law is, however, not absolute as was held in *Arvind Kumar & Brothers* that an irregularity in declaration of stock of foodgrains found by the authority and the order confiscating entire stock passed by the District Supply officer while inspecting the places of the business of the petitioner who was carrying on business of sale and purchase of food-grains and having a licence issued under the provisions of Gujarat Essential Articles (Control & Stock Declaration) Rules, 1991, was quashed as unnecessary harassment.

Orders for allotment of fair price shops, allotment of petrol pumps and price fixation of various essential commodities such as sugar, etc. have been time and again exhorted by important judgments of Courts analysed below showing the trend of the Judiciary towards proper and more careful implementation of the Law in making Control and Licence Orders and executing the same. Defective implementation has been identified in the following cases by the Judiciary relating to the various declared commodities under the Essential Commodities Act, 1955, for exercise of control over their production, supply and distribution, etc. in the interest of the general public and identified beneficiaries.

In *Karamchand Saraf* the fixation of price of kerosene adding transportation charges, commission, etc., along with it and imposition of statutory duty upon respondents to fix price of sale of kerosene and its transportation was held as improper implementation of the circular in this regard and was struck down by the Hon'ble High Court of J&K.

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297 *AIR 2007 J & K* 13
The above landmark decision citing arbitrary and improper implementation and decision making in the issue of Control Orders and Notification (for allotments) cited by the Court urges the executive for proper application of mind in implementation of the Law and upholding its objects.

The Judicial trend is in favour of comprehensive delegation under Section 5, of powers under Section 3, of the Essential Commodities Act, as it was held that, "...it does not suffer from excessive delegation. When parliament itself has provided for such delegation of powers to the State Government through the Central Government, no question of excessive can arise" and would be proper for purpose of the Law.

"Fixation of control price for a part or certain percentage of stock under S. 3(2) is valid as S. 3(3) contemplates fixation of control price for an entire stock or a part thereof."

As was held that, "In case of a statement of allegations against himself accepted by the detenu recorded under S. 161 Çr. P.C which is not a legally recorded confession that can be used as substantive evidence against the accused in a criminal case cannot be brushed aside on that ground for the purpose of his preventive detention".

The above decisions affirm that the procedure and law applicable to normal criminal matters is binding on the cases relating to essential commodities. Also the presence of element of mens rea has been dispensed with. Hence, the judicial trend favours very strict interpretation of the Law of essential commodities. Therefore, it is required that a very keen and agile system of review.

298 Nanaalal Naval Nathji v. Collector of Bulsar AIR 1981 Guj. 87(D.B.)
be adopted for its implementation and also to check harassment of the accused/innocents.

The Courts have very clearly spelt out the limits of administrative and executive control and also has pointed out that it is not the normal procedure for criminal offences that can be applied in essential commodity cases.

However, need is there for proper and objective application of this delegated power so as to assure that the fundamental rights are not encroached upon. Also, vexatious complaints have been sought to be discouraged by providing immunity to public officials in discharge of their official duty under S.15A.

Improper implementation of Law is also seen in the initiation of confiscation proceedings by the Collector. In one case\textsuperscript{301} the accused was charged with having committed an offence punishable under Section 7 of the Manipur Foodgrains Dealers' Licensing Order, 1958. His godown was searched and 178 maunds of paddy were found stored in it. He pleaded that the paddy was meant for consumption of the members of his family who numbered 15. He also pleaded that 40 maunds of paddy belong to his relation. The Magistrate convicted the accused of the offence charged. In that case the Supreme Court held that under clause 3(2) of the Order where stock of specified foodgrains in a quantity of 100 maunds or more is found with a given individual, a statutory presumption can be raised that the foodgrains had been stored by that person for the purpose of sale. However, the presumption raised under clause 3(2) by itself would not sustain the prosecution's case that the accused was a dealer under clause 3(1) and that inevitably the charge under Section 7 of the Essential Commodities Act was not proved against him.

\textsuperscript{301} Manipur administration v. M. Nila Chandra Singh AIR 1964 SC 1533
Hence, Magistrate must satisfy by inquiry before charge on the basis of statutory presumption to sustain allegations in trial. Statutory presumption effects a need for investigation only and is enough for not conviction.

In proceedings under Section 6-A while the first requirement is for the collector to satisfy himself that there has been some contravention of the relevant Control Order with regard to the essential commodity that has been seized, confiscation of the goods should not follow as a matter of course in each case where the Collector finds that there has been contravention. The language of Section 6-A is that after being satisfied of the contravention the Collector 'may order confiscation of (a) the commodities so seized. This language gives discretion to the Collector in the matter of confiscation and in appropriate cases he may refuse to confiscate or leave the property in the hands of the courts for disposal along with its order in the case. Even if he decides to confiscate, it is not always necessary to do so in respect of the whole seized commodity and depending on the circumstances, confiscation of merely a part which would include confiscation of goods worth a fixed money equivalent would be not only justified but proper. Therefore, the question whether the seized goods should be confiscated and if so to what extent are matters that has to be considered by the Collector and the appellate authority before passing or confirming an order of confiscation. The nature of contravention and all other circumstances of the case would be pertinent for deciding the extent of confiscation. One factor may be the market situation of the commodity and whether it is or expected to be in short supply and if the contravention creates a suspicion of an intention of clandestine disposal of the stock and its withdrawal from the usual market. In fact it would be desirable for the raiding authority to give its comments on these aspects from the point of view of local market in the seizure memo or report itself. This would assist the authority in taking a decision in proceedings under Section 6-A and
tailoring the confiscation order to the requirements of the case. In the instant case there was no indication of any short supply of, or widespread black marketing of bulbs in general or any brand seized and the breach was prima facie more or less a technical one. "It would be wholly improper in such circumstances to confiscate the total stock of about 6,000 bulbs"."302.

In another case it has been held that, "there cannot be any occasion for the Collector of the District to pass an order in exercise of the power conferred under Sec. 6-A of the act unless there is contravention of the order made under the act. The expression occurring in Sec. 6A 'if he is satisfied' means that the Collector must have reason to believe that there has been contravention. The seizure is only valid if there is any violation of the act otherwise not. The Collector cannot proceed with enquiry when the seizure itself is illegal."303.

It has been held that, "the provisions of U. P. Cement Control Order or Cement Control Order would not apply to the non-levy cement. Such report was against M/s. Girja Shanker Daya Shankar and others on the ground the Girja Shankar Daya Shankar is dealer of non-levy cement and that the Section Officer received information that the door of the premises of the firm was closed from outside but inside the premises bags of cement were being emptied and refilled for reducing their weight. The S.H.O. raided the premises of the firm and found the premises locked from outside and the raiding party seized 133 bags of cement. There is no contravention of any order by the act of the accused."304.

The Division bench has held that, "it is unfair to suspend the supply of commodities to fair price shop because there is a criminal case pending against its dealer, since allegations do not amount to contravention of the terms and

conditions of licence. In this case the petitioner was a licensee and his licence was not cancelled. Criminal case was pending against him and the Sub-Divisional Officer directed the stoppage of supply and allocation of commodities. This was held invalid\footnote{R.D. Shetty v. IAAJ AIR 1979 Supreme Court 1628.}

"It is clear from the express provisions in Sections 6-A and 6-B of the Act, that before passing an order of confiscation, the concerned authority must be satisfied that there was contravention of a provision of law touching the matter and there was proper and justifiable grounds for confiscation. It is not enough if the Collector is satisfied that there is contravention of the Order, he must further be satisfied that there are proper and adequate grounds for passing an order of confiscation. In other words, a mere violation of any of the clauses of the Order by itself will not be sufficient to pass an order of confiscation. The District Collector must call his attention to the matters he is bound to consider and exclude from his consideration matters which are irrelevant to that which he has to consider. All the relevant and material facts and circumstances must be subject to an objective test. In the case on hand, the District Collector has not applied his mind and considered whether the property involved in this case was liable to be confiscated. The orders passed by him clearly show that it was only because he was satisfied that there was violation of Clause 3-B read with the Order of Government of India dated 6-9-1979 that he ordered confiscation of the quantity of sugar in this case. Applying the principles laid down in Sasidharan v. State of Kerala\footnote{Satish & Co. v. State of Kerala 1983 EXCISE AND FOOD ADULTERATION REPORTS 237 at pp. 240, 241 (Ker).}, the orders passed by the District Collector confiscating the quantity of sugar in these cases cannot be sustained\footnote{1980 Kerela LT 671}."
The goods seized from the shop of the applicant were confiscated mainly on two grounds. It was said that the applicant did not keep proper accounts of the commodities in his stock and then it was said that he wanted to black market these commodities, therefore, certain things were in excess of what should have been in the stock. In this case, however, the price of these commodities was not controlled, therefore, the question of any black-marketing did not arise. "It is true that accounts were not properly maintained, but we do not know at what hour of the day this raid was made and whether at that hour of the day the applicant was required to keep up the day-to-day and proper accounts. In any case the non-keeping of accounts was only a technical ground for which every commodity in the shop of the applicant should not be confiscated."\textsuperscript{308}

"Because 1,503 bags except one were not opened the officials who had undertaken the inspection of the godown could not say with any amount of confidence that all the said bags were filled with khandasari. There was no proper proof that more than, 1,000 bags were, in fact, sugar of that type and there was no reasonable hearing afforded to the petitioners. The proceedings of the Commissioner are vitiated by a flagrant defect of procedure and the Court would not be justified in maintaining the order for confiscation despite the laudable object which seems, prima facie, to have prompted the said officer to deprive the dealers of their goods i.e. to make them available to the lay consumers through fair price shops. The order of confiscation must therefore, be set aside."\textsuperscript{309}

"It is well established that any exercise of statutory power interfering with the property rights of citizens is possible only after strictly complying with the pre­conditions for the exercise of such a power. The reason to believe therefore, must relate to the period of time when the impugned seizure was made, in other

\textsuperscript{308} Vijay Vanaspati Stores v. State of U.P. 1982 EXCISE AND FOOD ADULTERATION REPORTS 245 at 246 (All).

\textsuperscript{309} Suraj bhan Sarad Kumar v. Delhi Administration (Delhi) 1981 Chand Cri Cases 53 at p. 61 (Delhi).
words, even any subsequent acquisition of belief in this regard would be of no avail vide the observations of Rajagopala lyenger, J. in Collector of Customs v. Nathella Samphus Chetty\textsuperscript{310} and Shah, J. in M.G. Abrol v. Amichand Vallamji\textsuperscript{311}.

The question of application of mind fell for consideration by the Supreme Court in Barium Chemicals Ltd. v. A. Rana\textsuperscript{312} though it was in the context of a different expression, namely, 'considers it necessary', having been employed in that statute. The following observations were made by H. R. Khanna, J., speaking for the Supreme Court:

"The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'considers' is to attentively survey, examine, inspect, to look attentively, to contemplate mentally to think over, meditate on, give heed to, take note of, to think deliberately, to think oneself, to reflect (vide Shorter Oxford Dictionary). According to Words and Phrases, Permanent Edn, Vol. 8-A 'to consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination, to ponder, study: meditate upon, think or reflect with care.

The above observations would be appropriate even in the context of 'reason to believe' in so far as it would bear upon the application of mind because reason to believe cannot be said to exist unless there is application of mind as to whether a particular state of affairs exists or does not exist at a particular time"\textsuperscript{313}.

Where the impugned order did not record the satisfaction of the Collector that there has been a contravention of any order made under Sec. 3 of the Act

\textsuperscript{310} AIR 1962 SC 316 at 337.
\textsuperscript{311} AIR 1961 Bom 227 at 232.
\textsuperscript{312} AIR 1972 SC 591.
\textsuperscript{313} Hindustan Aluminium v. Controller, Aluminium AIR 1976 Delhi 225 at p. 234.
and the Collector reconciled himself in passing the impugned order on the mere observation that inasmuch as the opposite party Nos 3 and 4 did not lay any claim before him to the seized commodity, he was not expected to go any further in the matter, and that was sufficient for him to pass the order of confiscation. Held, the order of confiscation passed in such terms did not satisfy the conditions imposed by Sec. 6-A of the Act. It was open to the Collector to reject the plea of opposite party Nos. 3 and 4 before him to the effect that it were not they, but the petitioners who were concerned with and were owners of the commodity in question and then record a finding that they dealt in the essential commodity for which a licence was required. But having recorded no finding in this regard, even by implication but stopping short by mere observation that as they did not lay any claim, his function was over and the condition for passing the order of confiscation was satisfied, he was committed an apparent error. The impugned order was set aside on this ground alone.\(^{314}\)

The goods seized, in respect of which a belief was entertained that “the withholding was in contravention of the Aluminium Control Order 1970, were not available for being seized having been sold and despatched even before the seizure; it would not be proper therefore, to order that the goods in respect of which no such violation had been established and in respect of which no belief as required by law seems even possible, should be detained, even for a temporary period.”\(^{315}\)

But after June 1974, Section 7 of the Act has been substantially amended. In all cases of breach of Orders there may not necessarily be a prosecution launched by the State. “Where there is no prosecution and only proceedings under Section 6-A are taken before the Collector the discretion is retained with..."\(^{314}\)


the Collector to pass an appropriate order of confiscation with regard to the whole or part of the goods seized.\footnote{316}

However, the observation of the Collector that except the bland statement of the accused and his father there is no evidence, oral or written available to substantiate the claim of the first revision petitioner herein proceeds on the assumption that an opportunity was given to him to adduce evidence and he failed to avail himself of the same. A summary procedure has been resorted to by the Collector and no witness has been examined either on the side of the Police or on the side of the revision petitioner. Held, "therefore, this reason given by the Collector for disbelieving the case of the first revision petitioner is untenable. No other valid reason has been given by the Collector to disbelieve the case of the first revision petitioner."\footnote{317}

Another instance validating hypothesis no. 1 is where bajra belonged to one Narayansingh Lotusingh Pardeshi of Village Rajwal, and he was in possession thereof under an agreement of sale and that the same was brought in Dhulia by the said Mr. Pardeshi at about 8.30 p.m. on the previous day, that is, on 30 January 1975. This import was supported by an octroi receipt and the 52 bags of bajra brought thereunder were actually brought to petitioner's shop in the morning. As far as bajra was concerned, Pardeshi supported the case of the petitioner. No accounts relating to the said stock were found in possession of the petitioner at the time of the enquiry by the District Supply Officer. He, therefore, took possession thereof and produced them before the Collector for taking action under Sec. 6(1) of the Act for contravention of the provisions of the Maharashtra Foodgrains Dealers Licensing Order, 1973, under which orders were issued as per the provisions of the Act. It was held that, "as regards the transaction relating

\footnote{316 Madhav Keshav Mirashi v. State of Maharashtra 1978 Cr. LR 185 at p. 192 (Mah).}
\footnote{317 M. Perumal Pillai, re 1980 LW (Cri) 222 at pp. 223, 224.}
to *bajra*, the commodity, was brought by Narayansingh Pardeshi within the municipal limits of Dhulia on the night of 30th January at about 8.30 p.m. From the explanation given by the petitioner it was clear that the stock actually was delivered to him only in the morning of 31st. According to the petitioner, it was only under an agreement of sale that the stock was taken possession of by him and the transaction was complete. Even if this explanation regarding the transaction, being in the nature of an agreement of sale, was not accepted, still the fact remains that the *bajra* in question was actually delivered in possession of the petitioner on the morning of 31st. The stock was inspected at 1.30 p.m. The petitioner did not dispose of any part of the *bajra* which was delivered in possession of the petitioner and having regard to the fact that the stock was inspected within a few hours after the receipt of the stock by the petitioner and the fact that no part of it was disposed of by the petitioner during the interval, it was held that the petitioner has not violated the condition of licence relating to the maintenance of the account so far as that transaction was concerned. The Sessions Judge had not considered this important aspect of the matter and therefore, the Sessions Judge had fallen in the patent error in passing the order of confiscation of 17 quintals of *bajra*. If the *bajra* stock had been received in the morning of 31st itself, it cannot be said that the petitioner has committed contravention relating to it\(^{318}\).

The provisions of the licence permitted a licensee to inform the licensing authorities about the **new godowns within forty-eight hours of their occupation.** In this case, the rice in question was seized by the police on the very day it was stored by the applicant in the new godowns. There was thus no opportunity left to him to intimate the licensing authority and it would have also been useless. However, the applicant actually intimated the authorities the next day. Held, "so

it cannot be said that there was really any contravention of the provision of the
U.P. Food-grains Dealers Licensing Orders, 1964, and as such confiscation of
the same by the authorities concerned was illegal. The notice which was issued
to the applicant only required him to show cause as to why the rice in question
be not confiscated for his storing the same in unauthorised godowns. There was
no allegation that it also proposed to confiscate the rice for purchasing the same
from outside Lucknow district and thus violating the provisions of the U.P. Rice,
Paddy (Restriction on Movement) Order 1970, so when there was no notice
under Section 6-A on that ground confiscation for that reason could not be
ordered.319 This judgement of the Hon'ble High Court of Allahabad shows how
improperly the Law is being implemented in some areas needing intervention of
the Courts.

In another case it was held that, “the order of confiscation passed by the
Collector under Section 6-A for the alleged confiscation for violation of the
condition of licence as regards maintenance of correct records in respect of the
stocks of edible oils having been violated suffers from a serious infirmity and is
required to be suitably modified”320. In the particular, facts and circumstances of
the case show only 924, 100 kgs. of edible oil having been found to be the
essential commodity in respect of which the contravention of the order was made
by the applicant within the meaning of Sec. 6-A. The order of confiscation should
have been passed by the Collector in respect of the said quantity alone, and not
in respect of the entire quantity of 3545,500 kgs. of edible oils.

Section 6-A, upon its plain reading, refers to the seizure of that essential
commodity for which contravention of the order is alleged to be committed.
Where 33 bags of sugar were duly shown in the account and so there was no

319 Basantlal v. State 1979 All Cr C 40 at pp. 42, 43
contravention of condition No. 3 of the licence of Karnataka Sugar Dealers Licensing Order 1962, it was held that no contravention of the Order took place in respect of 33 bags of sugar and hence, the same could be not seized nor confiscated under Section 6-A of the Essential Commodities Act.

9.2.2. Test of Hypothesis no. 2 black marketing and bribery and corruption in implementation of orders and directions on essential commodities - PROVED.

Bribery and corruption in the production, supply and distribution mechanism is rampant and a glaring problem as observed from the Judicial trend and observations of the Hon'ble Courts;

In Raj Kumar Kishan Chand Khanchandini v. Dy. Food and Civil Supplies Controller\textsuperscript{321} irregularities in granting of license for sale of kerosene were found and prosecuted in the form of cancellation of the same;

Rashmi Pandey v. Chairman/Managing Director, Hindustan Petroleum Corporation\textsuperscript{322}, transparency in allotment of dealership of high speed diesel and petrol were questioned and its absence was proved beyond doubt as a result cancellation of the allotment of dealership was ordered by the Court;

Invalidation of confiscation proceedings u/s 6B and hint towards harassment in lieu of bribe was made by the High Court of Bihar in Amarjeet Singh\textsuperscript{323}.

In Cases like V.G. Duraisami\textsuperscript{324} the secretary of the cooperative society in connivance with one salesman contravened the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1974, “instead
of fairly distributing the scheduled commodities (sugar) to the card holders have disposed all sugar by making false entries" 325.

The Contention that corruption and bribery as also connivance and nexus in the offences by public servants are rampant, amounting to abetment are plenty, in the activities related to essential commodities as evident from the above case and about the modus operandi.

Justice P.D. Wadhwa in his report has disclosed that every PDS depot holder pays Rs. 1,200 to the police inspector every month, and the circle inspector of the Department of Civil Supplies asks for Rs. 1,000 as bribe every month. The committee has given indications of bribes being paid at every step. Even to get the Below Poverty Line (BPL) card issued, the gram panchayat (local self-government) secretary takes a bribe of Rs. 500.

This implies that one has to pay through his nose to get oneself recognized as a poor person. When corruption has reached such a level, it would be foolish to expect that the poor would ever get his right, or that plans launched by the government for welfare of the poor would ever reach the targeted populace.

In The Durg Sahakari Vipman Samitee Maryadit and others326 the High Court of Chhatisgarh, as well as, in Hiralal Kaluram327, the High Court of Gujarat, remarks were made in the observations regarding deficit quantity of Kerosene sold at higher price and the guilty were punished.

Also during 2005-2008, State and Union Territory Governments prosecuted 14,541 persons under the provisions of EC Act, 1955, and secured

325 Ibid
326 [AIR 2007 Chhl20]
327 [AIR2000 Guj324]
conviction in 2,310 cases. In 2009 as on 31 August, 2533 persons had been prosecuted and 37 convicted. These facts expose the malicious, vexatious prosecutions initiated against the traders and other individuals as alleged from time to time by the officials and also the lack of gravity in investigations to allegations of hoarding, adulteration and other blackmarketing complaints.

A heavy burden also lies on the judiciary to dispense these cases swiftly and ensure that justice expeditied and the guilty are penalized. If need be with the re-establishment of Special Courts for the purpose.

Hence, it is crystal clear that it is up to the discretion of the authorities to impose the fine in lieu of confiscation of essential commodity as well as the vehicle or other carrier but, it has to be uniform and some basis has to be arrived at by the authorities and it is not incumbent to pass the maximum sentence by virtue of the powers conferred on them. The law leaves the measure of punishment to the discretion of the Court. Hence, it is essential "in deciding the measure of punishment, fine or penalty considering the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, his age, character and antecedents".

The overriding effect of the delegated powers under the law is, however, not absolute, as was held in *Arvind Kumar & Brothers* by the High Court of Gujarat, that, an irregularity in declaration of stock of foodgrains found by the authority and the order confiscating entire stock passed by the District Supply officer while inspecting the places of the business of the petitioner who was carrying on business of sale and purchase of food-grains and having a licence.

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329 <http://chura.staready KB 1956 Aii 198; 59 Cr.JJ 316; ILR(1957)2 All 147.>
issued under the provisions of Gujarat Essential Articles (Control & Stock Declaration) Rules, 1991, was quashed as unnecessary harassment.

It was held, that, "the entire quantity of food-grains is not liable to be confiscated only on the ground that there were certain irregularities in the declaration of the stock position"331.

Nevertheless, there are instances where the dealers and license holders are forced to resort to corrupt practices in likewise situations due to the arbitrary decisions of the public authorities abusing the delegated powers and also imposing penalty without application of mind to escape the tedious process of Law and in the case of non availability of any compensation. This fuels a spiraling effect in bribery to escape unnecessary harassment and the bribed money is in turn passed over to the consumer or recovered by the dealers by resorting to unethical practices out of inevitable necessity.

Additionally, states most frequently withdraws from prosecutions related to cases registered under the Essential Commodities Act as compared with other prosecutions. This shows not only the tolerance that various state governments exhibit towards bribery and corruption, but also the influence of the licensees upon the government.

9.2.3. Test of Hypothesis no. 3: Budgetary subsidies are not able to reach the beneficiaries - PROVED.

Another acute problem in the supply and distribution process faced is that the budgetary Subsidies are not reaching the beneficiaries in the intended form of highly subsidized commodities meant for the poor and other vulnerable sections of the society which are being manipulatively diverted to open market, for blackmarketing etc., resulting in mal distribution. Recently in the State of

331 Ibid
Orissa it has come to light that an amount of Rs. 2000 Crores were swallowed by the concerned executives in three districts only from pulses distribution. In the District of Kalahandi starvation deaths are still witnessed due to non availability of food stuffs and malnutrition i.e. non availability of pulses. It can be asserted here that the intended beneficiaries are deprived of the budgetary allocations and subsidiaries in essential commodities. This is due to improper supply and distribution or due to diversion to the illegal black markets of the commodities.

The judicial trend in this regard has also pointed towards this grave malady, thus, validating hypothesis no 3.

In V.G.Duraisami the secretary of the cooperative society in connivance with one salesman contravened the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1974, “instead of fairly distributing the scheduled commodities (sugar) to the card holders have disposed all sugar by making false entries”332.

Also, pertinent to mention in this context is the U.P. Flour mills Association & Ors333 where a writ petition was filed invoking the extraordinary jurisdiction of the Constitution of India, 1950 under Article 32, in the matter of Allocation of subsidized wheat stocks by Government of India through Public Distribution System in the States of West Bengal and Assam diverting the same to open market on subsidized rates instead of to intended beneficiaries, causing loss of several crores. In deciding the Writ Petition the Supreme Court held that “Directions be issued to the concerned Associations/Gram Panchayats/Local bodies to assess the need of wheat/atta for the intended beneficiaries which would be conveyed to the State Government who would then supply it to the Fair Price Shop to be finally supplied to the consumer”334 for effective control over the

333 U.P. Roller Flour Mills Association & Ors v. Govt. of India & Ors. AIR 2008 SC 130
334 Ibid.
supply and distribution system. This direction introduces the need for the involvement in the decision making process of the local people/beneficiaries.

Since the judicial trend is in favour of strict interpretation naturally, the system must be made transparent to check the loopholes and to dissuade the intending offender (including abettors) for making the budgetary subsidies reach the beneficiaries in whole instead of being "siphoned off." to enable equitable distribution of the essential commodities to the intended beneficiaries in the present significant situation of record foodstuffs production in the Country.

In summary, targeting is not serving its real purpose, as the beneficiaries do not get food and other essential commodities in accordance with their entitlements. This is also evident and corroborated by the study of the stakeholders (See Chapter 7).

9.2.4. **Test of Hypothesis no. 4: Absence of stringent Penal liability creates proliferation of Essential Commodity related offences.** - PROVED.

The Judicial trend is in favour of imposing stringent penalty to the guilty to refrain him from proliferating offences and to prosecute the actual offenders, i.e., the real conspirators and the persons as observed by the Supreme Court in Precious Oil Corporation that, "No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white-collar criminals who are likely to go scot free and are committing offences by neither casual provocation nor motive against particular persons but, for whom 'planned profit-making from numbers of consumers furnishes the incentive", who are systematically organizing the

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335 U.P. Roller Flour Mills Association & Ors. v. Govt. of India & Ors. AIR 2008 S.C. 130.
336 M/S Precious Oil Corp & Ors. v. State of Assam, SC dt. 05.02.2009.
offences through adulteration, hoarding, black marketing, etc., of essential commodities.

However, the judicial trend also cautions not to harass innocents and to upkeep the larger interests of society.

In this instant case, the tanker of the petitioner was taken into custody on 12.8.97. So far, the collector had not passed any order whether the tanker should not be confiscated. The tanker was standing idle in the police station. It was likely to suffer damage if it remained unattended in the police station. Besides, the tanker was earning something to the owner. If the tanker remained idle in the police station without being put to use not only will it be a loss for the owner but to society at large. It was held that, “keeping in view the larger interest of the society the tanker in question was entered to be released in favor of owner on Superdari on furnishing the security to the satisfaction of Special Court under EC Act 1955”337.

An appeal has been preferred against the order of High Court of Gujarat which quashed the order of Special Judge who affirmed the confiscation of cement stored in 42,658 bags. The order of confiscation was passed under Section 6A. It was held that, “in absence of adverse relevant evidence and inference of violation of control order cannot be made because in this case there was delay in transportation of remaining cement and therefore Gujarat Control Order is not applicable”338.

However, in the instant case, “the applicant-dealer knew and was supposed to know that under the terms of the licence and under the provisions of the Essential Commodities Act and the Orders of the State Government made in exercise of the powers under Section 3 of the Act, he was required to make certain compliances in time in the particular registers which he was required to

338 State v. Devika Devi 1996 SCC (Cri) 184.
maintain in the matter of his purchases and sales and the existing stock of foodgrains. Since, the applicant-dealer had failed to make the necessary entries in time, for whatever reason it be and with whatever explanation he may have in this regard, he would be held to be consciously and deliberately violating the provisions of law, with a guilty mind"339. In such cases the penalty and punishment should no doubt be more stringent.

Strict penal liability is also directed for deterring the prospective offender and the guilty from repeating the offences in the decisions of the Supreme Court as in *Icchu Devi Chhoraria*340 held that, "whatever is the Law laid down by the Courts in the case of smugglers would be clearly applicable in the case of preventive detention under any other Law"341.

In other cases "the Collector, having been satisfied under Section 6-A of the Act that the applicant committed the contravention of Cl. 3 of the Licensing Order by carrying on business as a 'dealer' in rice without obtaining a licence for the purpose from the licensing authority, rightly ordered the confiscation of eleven quintals of rice seized from the applicant. The contravention as regards carrying on business without a licence was committed by the applicant in respect of the entire quantity seized from him and as such as no fault could be found with the Collector ordering confiscation of the entire quantity"342.

In this instant case, the contraband rice which had been seized by the Police, belonged to the fair price shop of G. As such the rice should have been sold and stored at that place. The rice, as a matter of fact, was seized while it was being negotiated for sale in the market. The defence set up by B, father of the Licensee G has been repelled by the courts below. "It is thus clear that the rice belonged to the fair price shop. As such, its sale at a place other than the fair

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341 Ibid
price shop was a clear contravention of the provisions of U. P. Grain Dealers Licensing and Restriction was a clear contravention of the provisions of U. P. Grain Dealers Licensing and Restriction question."^{343}

"Section 6-A of the Act does not make it obligatory upon the authorities finding a person guilty of contravention of the Act, Order or conditions of licence to confiscate the entire stock, though it is permissible. Confiscation of entire stock depends upon the facts and circumstances of each case."^{344} In *Dilip Kumar v State of U.P.*,^{345} entire quantity of *gur* found in the shop was confiscated and it was held to be justified and called for no interference.

It has also been held that, "It is not a harsh penalty for contravention of Control Orders and no prejudice is caused if the appellate authority modifies the confiscation order to 5 quintals of oil from a confiscation order of total quantity of oil seized."^{346} As far as section 6A is concerned "it vests a wide discretion in the authorities concerned. The authority may order confiscation of the entire stock or may not order confiscation of any stock at all. The order of confiscation is a judicial order. Relevant facts and circumstances should be taken into account by a Court in determining the penalty to be imposed."^{347}

In another case where the petitioner was a company and petitioner no. 2, a share holder a certain quantity of *Vanaspati ghee* was seized. This was challenged. It was held and direction was given that, "the petitioner may move the Collector of Jaipur for giving interleaf and decide the application in accordance with law and be not influenced by the Order of the Court."^{348}

Judicial trend also reflects lenience towards strict penal liability for putting a check on offences. Section 10 at present not making all partners liable "should

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^{345} 1984 ALJ 816.


make all partners liable and put the onus on them to disprove allegations against them (including sleeping partners)^349. As such corporates and firms are taking advantage of the provision and proliferating benami (anonymous) trade and transactions in the process increasing white collar crime.

Presently, all offences and violation of the provision of this law is viewed seriously and are made cognizable and non-bailable. Provision for punishment to erring officials under the Act would give it the vital, crucial stringency, needless to explain, that traders have been unnecessarily harassed by the officials for obvious reasons as can be deduced from the above judicial pronouncements. Provision that officer, if proved guilty in a court of law, will be punished for harassing the traders will benefit both the traders and consumers and will be a welcome measure. Similarly, the power of the officials under the Act should be reduced. The officials should 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 and produce a copy of the order of permission taken from the Magistrate to the trader as suggested by the stakeholders such as dealer and retailers, thus validating hypothesis no. 4.

9.3. SUGGESTIONS

The following suggestions including both legal and administrative measures are advanced for incorporation in the law and to bring administrative reforms in the control over the essential commodities encompassing the opinions and views of the Courts, other connected authorities, general public, stakeholders and media reports.

9.3.1. **Legal measures and suggested changes in the Law**

1. An order issued under Section 3 of the Essential Commodities Act, 1955, is legislative in nature and requires to be notified in the official gazette which is being done by some state governments at present. However, orders issued by the Central Government must also be notified in the Central gazette.

2. Presently, all offences and violation of the provision of this law is viewed seriously and are made cognizable and non-bailable. But the trader’s associations have demanded that all offences to be made bailable. As it is, a large number of offences are being reported and if the offences are made bailable (as demanded by some dealers) will weaken the Act and its prohibitive nature.

3. Provision for punishment to erring officials under the Act would give it the vital crucial stringency, needless to explain, that traders have been unnecessarily harassed by the officials for obvious reasons.

4. Provision that officer, if proved guilty in a court of law, will be punished for harassing the traders will benefit both the traders and consumers; will welcome this amendment.

5. Similarly, the power of the officials under the Act should be reduced. The officials should 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 and produce a copy of the order of permission *taken from the Magistrate to the trader*.

6. Any attempt to reduce the period of imprisonment from 7 to less years and also reduction in the amount of fine (as demanded by some stakeholders) will certainly dilute the Act and will be against the interests of the consumers. Rather the imprisonment should be made rigorous.
7. It is easy for any trader to pay monetary fine for an offence and escape the arm of the law. Instead, the quantum of fine should be increased to a prohibitive extent that the trader would not indulge in hoarding or black marketing in future.

8. Another pertinent observation is that while the number of persons prosecuted under this Act has grown steadily, the rate of conviction remains very low. During 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. In 2009 as on 31 August, 2533 persons had been prosecuted and 37 convicted350. These facts expose the malicious, vexatious prosecutions initiated against the traders and other individuals as alleged from time to time by the officials and also the lack of gravity in investigations to allegations of hoarding, adulteration and other black marketing complaints. Before initiation of prosecution proper preparation is necessary for getting a conviction.

9. A heavy burden also lies on the judiciary to dispense these cases swiftly and ensure that justice expedited and the guilty are penalized. If need be with the re-establishment of Special Courts for the purpose.

10. Additionally, states most frequently withdraws from prosecutions related to cases registered under the Essential Commodities Act as compared with other prosecutions. This shows not only the tolerance that various state governments exhibit towards bribery and corruption, but also the influence of the licensees upon the government.

11. Section 2(a)(i) to (x) amended in 2006, is short sighted and only the restrictions imposed should have been relaxed to subserve the purpose and the act should have been made supervisory rather than regulatory to

give flexibility in control of commodities. Unless it is done there will be increase of litigation as regards the definition of various essential commodities e.g. tea\textsuperscript{351}, bricks, coffee, etc.

12. In case of Section 6A regarding confiscation of essential commodity the vehicle confiscation provision is defective, ambiguous and needs a relook for simplification of interpretation. Answer to the above question has been provided by the Supreme Court as, "Hence, the measure of fine which is required to be levied in lieu of confiscation under the second proviso to Section 6-A (1) would be relatable to the market price of the vehicle and not of the seized essential commodity. And, the fine amount in lieu of confiscation is not to exceed the market price of the vehicle on the date of seizure of the essential commodity. That is to say, the limit of such fine would be up to the market price of the vehicle on the relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case"\textsuperscript{352}.

13. It is suggested that the Essential Commodities Act, 1955 and the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1983, be merged to enact a new comprehensive legislation containing provisions relating to penalties and prosecution as a whole and not piece meal. More so, to remove difficulties in interpretation and dualism to derive effective benefits of prevention and imposing penalty to the guilty. As the intention should be to prosecute the actual offenders, i.e., the real conspirators and the persons behind the scenes as who are likely to go scot free and are committing offences for planned profiteering, who are systematically organizing the offences through adulteration, black marketing, etc. of essential commodities.

\textsuperscript{351} S. Samuel, M.D. Harrisons Malayava v. Union of India, AIR 2004 SC 218.
14. Section 6B also should be suitably amended and the phrase *or from whom it is seized* may be not included because it only provides a chance to the executive to either establish a nexus with the real anti-social operators or issuing a show cause notice to the persons (innocent or the small fish) from whom the goods are seized who may not be even aware at times about the contents of the vehicle or carrier and even may not know that the essential commodities he is carrying are adulterated or are meant for black marketing purpose, and this would amount to only "..a sufficient compliance with law" of the prosecution, in the process making a bogus or weak case and ultimately, the prosecuting agency failing to establish and prove allegations during trial and/or finally, withdrawing cases resulting in the actual deliberate offenders going scot free.

15. Under Section 6B (3), Substantial & compliance of provision is not defined, may be clearly defined in order to simplify interpretation so that it can be complied with without interference of the court.

16. Even if profit motive is not a *sine qua non* of the law but in case the confiscated goods are finally decided to be returned or the proceeds thereof, in case of the confiscated goods being perishable in nature has been sold off by the order o the Court a provision under Section 6C – for payment of interest along with sale proceeds should be made in cases of the sale of confiscated Essential Commodity to nullify any loss to the dealers or from whom the goods were seized and confiscated. The judicial trend is also in favour of such relief. Hence, the Law may be suitably amended to accommodate this provision.

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354 *Nathuni Sah v. State of Bihar 1997(2)BLJ 615(Patna); V. Nagabhusana Rao v. DRO(1978) 2 Andh LJ 71at p.73*
17. To eradicate rampant corruption which exists in India due to the failed criminal justice system, since, illegal dealing in essential commodities is a crime, therefore, offences under the essential commodity law must be tried in Special fast track Courts established for the purpose in each state, as mentioned earlier. Several States including Odisha are yet to establish such a Court, as a result cases registered in these states are pending for years to be decided through the regular Criminal Courts.

**Preventive Detention**

1. The basic concept underlying detention is that if preventive steps are not taken then the person sought to be detained is likely to indulge into an activity which is prejudicial to the maintenance of supplies essential to the community.

2. Hence, the detaining authority must be satisfied that unless the person against whom the order of detention is passed is likely to indulge in any activity prejudicial to the object of the Act, he should not be detained. The detention as envisaged under the Act is only preventive and not punitive in nature.

3. Likewise, where the gist of the grounds was to the effect that the detenu has arbitrarily sold away and disposed off the quota allotted to him for the month of September, 1980, it was held that “the order for preventive detention was passed without application of mind by the detaining authority” in as much as the activities which have been defined by explanation to Section 3 of the said Act which may amount to committing any offence under the Essential Commodities Act, 1955, or any other corresponding Law or dealing in any commodity regulated by the said Acts.

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with a view to making gain in any manner so as to defeat the purpose of
the said Act have not been faintly suggested in the ground for the
detention.

4. 

Alternative remedies ought to be considered and rejected before taking
more drastic remedy of preventive detention.

In the case of Ramnik lal Mohan lal Pandit, the High Court of Gujarat has held:

"...Once the petitioner surrendered his licence as a dealer in crude oil, it
was clear so far as future activity is concerned, and the petitioner would not be in
a position to deal in crude oil or to indulge in black-marketing in crude oil
because there is no scope / possibility for him to get / procure supplies of crude
oil. Once the license is surrendered they would not be in a position to supply
crude oil to the petitioner. The State Government is duty bound in each and
every case, where ever the question of detention under the provisions of the
Prevention of Black-marketing and Maintenance of Supplies of Essential
Commodities or any other preventive detention arises, to consider, whether, a
less drastic remedy than that of preventive detention would not meet the
requirements of the particular case under consideration. The records of each
detenu must show that the alternative or less drastic remedies were considered
and rejected and ultimately the decision for preventive detention was taken. If
those alternatives do not appear to have been considered, it is obvious that the
order of detention cannot be justified."

Similar views have also been held by the Supreme Court in Bannalal
Vahilda Chavla that, "the order of detention under S. 3(2) of the Prevention of
Black marketing and Maintenance of Essential Commodities Act, 1980, is liable

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356 Ramniklal Mohanlal Pandit v. C.J. Jose 1981 Cr.LR(Guj)463:1981GujLH 74
357 Ibid
to be set aside...", if alternate, less drastic, remedy is available to satisfy the purpose of detention.

It has also been held by the Supreme Court in *Smt. Ichhu Devi Choraria*\textsuperscript{359} that, "--the power of preventive detention is a draconian power justified only in the interest of public security and order and it is tolerated in a free society as a necessary evil. The power to detain without any trial is an extraordinary power constituting encroachment of personal liberty and it is the solemn duty of the Court to ensure that this power is exercised strictly in accordance to the requirements of the constitution and the Law. The Law cannot be subverted particularly in the area of personal liberty in order to prevent a smuggler from securing his release from detention. Whatever is the Law laid down by the Courts in the case of smugglers would be clearly applicable in the case of preventive detention under any other Law. However, the need for fixation of a time limit for the cases relating to essential commodities is felt"\textsuperscript{360}.

Therefore, in view of the aforesaid decisions and observations and the Law laid down by Supreme Court while considering detention under Maintenance of internal security Act, National Security Act, or any other Law of the like nature would also be applicable in the matter of detention under this Act. But, adequate safeguards should undertaken keeping in mind the nature of socio- economic offences and strict penal offence.

Hence, detention in essential commodity related offences should be carefully applied in order to minimize harassment.

However, as observed, "where there was a breach of Section 7 of the Principal Act, it could not be said that the breach covers breach of Prevention of

\textsuperscript{359} *Smt. Ichhu Devi Choraria v. Union of India* AIR 1980 SC 1983
\textsuperscript{360} Ibid
Black-marketing and Maintenance of Supplies of Essential Commodities Act\textsuperscript{361}, 1980, as analysed, earlier.

5. Hence, there is a need for merger of the provisions of the Acts in application which will serve the dual purpose of dissuading the intending offender and creating a fear factor to check future offences. In this regard observations of the Law commission of India\textsuperscript{362}, in its 47\textsuperscript{th} report, examining the imposition of stringent punishment that, ".ultimately, the justification of all sentencing is the protection of society. There are occasions when an offender is so anti-social that his immediate and sometimes prolonged confinement is the best assurance of society's protection...," culminating, in actual conviction for offences proved, as a necessary consequence.

9.3.2. \textit{Administrative Measures}

\"That is best, which is best administered.\"...Alexander Pope.

Hence, for efficient essential commodity control, regulation and enforcement the following suggestions are advanced on the administrative side.

9.3.2.1. \textit{For efficient implementation}

1. For efficient implementation of the law and administration of the Essential Commodities Act, 1955 and administration of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, a review of their provisions and other policy matters must be done periodically.

\textsuperscript{361} Kishorelal Amritlal Patel v. Rajiv Takru (1989) FAJ 34 (Guj)

\textsuperscript{362} 47\textsuperscript{th} REPORT OF LAW COMMISSION OF INDIA.
2. Expert training on interpretation of the provisions and amendments to the provisions of the Acts must be done frequently and regularly, respectively.

3. Periodic reviews have to be made for addition/deletion of items declared as essential commodities under the Essential Commodities Act, including a review of Delegation of powers and concurrence of the Central Government to Control Orders issued by the States/UT’s.

4. The establishment of a central Monitoring Cell for monitoring of information:

   (a) On implementation of Control Orders by States/UTs under the Essential Commodities Act and examination of reports & Grounds of detention and consideration of the Representations made thereof under the Prevention of Blackmarketing Act, on a monthly basis;

   (b) Action taken report on necessary action on the Court cases filed under the Principal Act and advice and review of necessary action on Court cases filed by the detenus under the Prevention of Blackmarketing Act;

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

   (d) Periodic issue of guidelines and instructions to State Governments/UTs for implementation of the Essential Commodities Acts.

5. The above suggestions would be sufficiently sufficed by granting powers such as:
a) To recommend penal action against any officer who without any reasonable cause has failed to implement the recommendations of the Monitoring Committee within the time limit prescribed.

b) Powers to award studies to selected agencies (that could include non-government agencies) as may be required from time to time for proper assessment of the quality of commodities provided at different authorized distribution centres within the jurisdiction of the Monitoring Committee.

c) Powers to engage the services of experts in different fields for assessment of quality of commodities for implementations of recommendations made by the Monitoring Committee.

d) Powers to call for public hearing for recording and redress of grievances and creating awareness about the activities of the Monitoring Committee among the beneficiaries.

e) Also for better coordination the State Legislation proposals should be referred for comments/advice to the central monitoring cell along with the feedback received by way of representations from Public and Trade Associations etc. relating to the Law, including related Parliament questions.

f) A system for periodic instructions and returns to the grassroot centres should be set up.

9.3.2.2. For price control

Emphasis on Food Stuffs and fertilizers:

Food stuffs being the basic essential commodity needs special focus in India where majority of the population is below the poverty line and instances of starvation deaths have become a common phenomena, including, suicides by debt ridden farmers in many States. Fertilizers being a fundamental element in the production of food stuffs and agriculture as a whole and is emphasized for
special efforts. The control over price of food stuffs supplemented by control cost of fertilisers requires special emphasis for its equitable distribution and availability at fair price for the benefit of the targeted and common cultivator.

1. The executive decision making must consider new concepts for price control like dissemination of futures prices of agricultural products and fertilizers that has been identified as an important activity for control of food stuffs.

2. The Forward Markets Commission, the regulator for commodity futures trading must be given the responsibility for implementing the Price Dissemination through a Project with the objective of disseminating prices (both spot and futures) of agricultural commodities among all stakeholders of the agricultural sector. Dissemination of futures prices will serve the following objectives:

   Firstly, the futures prices quoted at the exchanges can provide useful inputs to the farmers for decision making during pre-sowing and post harvest period.

   Secondly, information of prices can improve the bargaining capacity of the farmers and reduce the monopoly of the middlemen at the Agricultural Produce Marketing Committees (APMC'S) and rural Mandis. This would enable farmers to get best possible prices for their produce.

   Thirdly, dissemination of the Futures Prices would go a long way in improving farmers' awareness and the existence of the futures markets.

The Forward Markets should consider the following modes of dissemination:

a. Placement of price ticker boards:

   Placement of price ticker boards in around 950 mandis/APMCs, through AGMARKNET all of which are already networked under the AGMARKNET project.
Placement of around 300 price ticker boards at rural branches of Post offices would come handy.

b. Price dissemination activity by National Commodity Exchanges:

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

Dissemination of future prices should also be done through Doordarshan as well as other business TV channels. Initially, display of prices may be done through National network of Doordarshan.

A Price Monitoring Cell must be established for Monitoring of daily prices of essential commodities from all States. As already mentioned in previous chapters the suggestions of monitoring of weekly retail and wholesale prices of essential commodities from centres should be initiated also.

Preparation and distribution of monthly bulletin on prices, production, etc. will also serve the cause.

A public complaints system must be set in all States with sub-centres in block/district level may be established for feedback. The matters relating to production, export/import of essential commodities w.r.t. Export-Import Policy along with market intervention as and when required can be done. The collection of information on international prices, production, exports/imports levies etc. is also necessary. Examination of reports on price fluctuation in fertilizers by Ministry of Chemicals and Fertilizers (MoCF) and on Rabi and Khariff crops forwarded by Ministry of Agriculture (MoA) including, Buffer Stocking Policy (BSP) received from D/o Food and P.D. The WTO/GATTs related matters for
guidance to ICRIER in study on “FDI in Retail Sector” are also being mooted here. Strengthening of infrastructural structure of price monitoring cells of departments of food & civil supplies of States/U.Ts for uniform pricing with a note for “Crop Weather watch” group is also necessary.

Infrastructure for office automation (computerization and internet facility) including preparation & implementation of I.T. plan for all departments in matters related to direct selling and internal trade other than commodity exchanges should be done.

3. **For Transparency:**

   a) The GoI and States should print on all ration cards, for complaints of rates and quantities of subsidized commodities, where the cardholders can file complaints, etc.

   b) The specified fee, for any PDS ration cardholder, to obtain extracts from the records of a fair price shop owner should in no case be higher than 50 paisa per copy. A time frame of 15 days for providing the extracts of records should be strictly followed.

   c) The list of names and addresses of card holders should be displayed in public in order of eligibility, in every Fair Price Shop and panchayat building.

   d) The States should immediately ensure computerization of PDS records and maintain a website with all relevant information.

   e) Reduction of number of intermediaries may be considered for cost effectiveness and reduction of black marketing activities and wastages.

   f) Exports:– Relating to export of Food Stuffs: Government of India should place a ban on exports of subsidised food grains, directly or indirectly, at least for next five years. As the Government of India since 2000-01, has exported food grains violating the norms recommended by Group of
Ministers. In this process the Government of India further allowed many sops, which was mis-utilised by the private traders who made undue high profits. Taking into account the different, subsidies provided directly or indirectly the actual price paid by the exported for food grains turns out to be below BPL rate, as revealed in the recent CAG report363.

9.3.2.3. For effective Prosecution.

In this context, the following suggestions are advanced for the protection of the essential commodity consumer rights of the general public:

1. The Government of India must take immediate steps to prevent widespread corruption in supply and distribution of essential commodities through the establishment of independent and separate mechanisms to investigate offences. This mechanism must be independent from the local police, as the latter is corrupt and therefore, inefficient in investigating corruption. This requires a change in the existing domestic law – The Essential Commodities Act, 1955, and the government of India must be urged to make such changes and facilitate this process;

2. Confiscation proceedings under Section 6A must be delegated to specially designated fulltime officers under the Collectors.

3. The Government of India must urge its state governments to set-up the required number of special courts to deal with cases relating to controlled commodities;

4. The Government of India must expand a functioning controlled commodities network within the country, so that it

covers not only the 16% currently being covered, but covers all persons in need of food and other essential commodity security assistance.

5. The various Central, State/UT agencies should endeavour for spirited implementation of government circulars and check violation of control orders through vigorous and gritty prosecutions.

6. **Vigilance committees:** The States, which have not formed vigilance committees, should immediately constitute vigilance committees at State, District and FPS level.

6A. The FPS level vigilance committee must have a team of 5 people from among those chosen directly in a special meeting of the card holders who should be trained once in 2 years and should be provided a copy of the Citizens' Charter.

6B. The committees should monitor the compliance of orders, and send quarterly reports on the compliance to the advisors.

7. **Inspection and monitoring:** The States should consider creating a district level monitoring structure for PDS.

7A. However, immediately not later than six months, the sanctioned posts in each state civil supplies department or any other department responsible for implementing TPDS should be filled.

8. **Accountability System:** Any appeal by the PDS card holder or person claiming to be eligible for PDS card should be dealt with in a period of 60 days.

8A. Any appeal on denial of ration after the first week in a month should be dealt with in 48 hours time. To enable this State can consider appointing suitable appellate authorities at appropriate levels of authority to take strict penal action including cancellation against
erring shopkeepers. At the State level an independent body should be constituted as an appellant authority.

8B. The Government of India or State Governments should put in place clearly laid out office procedures on how to resolve each type of complaint arising from different violations, specifying all different types of violations, procedure for registering and maintaining the complaints, the designated authorities, the course of action to be taken by the designated authority with a mandatory time frame, penalties for different types of offences leaving little room for discretion, the type of complaints where filing FIR against the erring FPS dealer or official is mandatory.

8C. The action taken report on any vigilance committee should be submitted to vigilance committee members and Panchayat and Gram Sabha in not more than 60 days period.

8D. Further, the Gram Sabhas should have power to approve or veto the renewal of FPS each year, after a social audit, constituting at least 30 percent of the PDS cardholders. However, the decision regarding SC/ST FPS dealer, should be subject to approval by the District Collector.

The suggestions advanced above are essential to minimize loss to the exchequer and maximize benefit to the targeted and general public.

Stringent, speedy and dynamic prosecution is a glaring necessity since according to a report by think tank India forensic Research Foundation, the total loss to the Indian economy annually due to socio-economic crimes such as counterfeiting, commercial fraud, smuggling, drug trafficking, bank fraud, tax evasion and graft is estimated at Rs. 22,528 crore.
9.3.2.4. **Suggestions for smooth supply and distribution.** *(Proposed Supply chain Reforms/ Changes/Modifications in existing Mechanism)*

a) For effectiveness in supply and distribution, minimization of cost of kerosene oil and putting a check on illegal activities:

1. It is suggested that the sub-whole seller depots be abolished for Kerosene Oil and the authorities transport/supply Kerosene Oil directly to the retailers adopting the distribution network for high speed diesel. (See figure below).

2. Retailer may be established for every 300 to 500 card holders in lieu of the 5 kms criteria as for diesel to give adequate return on his investment. (See figure below).

**Figure-8**

```
<table>
<thead>
<tr>
<th>Oil Company(High Speed Diesel/ Kerosene Oil)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-Whole-Seller</td>
</tr>
<tr>
<td>Retailer</td>
</tr>
</tbody>
</table>
```
b) For effectiveness in supply and distribution of Food Stuffs, price reduction and putting a check on illegal activities:

1. The elimination of storage agent tier is suggested and Government should directly transport/supply to the fair price shops from State owned godowns/procurement centres;

**Figure-9**

[Farm to Retail Diagram]

[* Fair price shop; * Below poverty line; **Above poverty line;***Persons without card or having above quota requirement buying from open retailer.

@ a) Converting existing Receiving Centres (RC) to Departmental Storage Centre (DSC) replacing Private Storage Agents. Commodities will be distributed from these DSCs to Fair Price Shops.

b) Reorganising staffing at Receiving Centre-cum-Departmental Storage Centres for effective business operation.

c) Organising first level transport mechanism for effective inter-district and interwarehouse transportation of commodities.

d) Also organising second level of transport mechanism for door step delivery of commodities from DSC to Fair Price Shops.]

2. Alternatively, a scheme may be made that the card holder buy the commodities from any fair price shop or open market at competitive prices during the month and submit the purchase memo’s to the authorised...
personnel designated for the purpose at the end of the month to get the excess price paid by him (card holder) deposited in his bank account as per his card eligibility.

The researcher will feel that his labour has been suitably rewarded if the above suggestions advanced by him would be considered by the Legislature, Courts and other related authorities as discussed above.