Commodities essential for human and community sustenance are classified as essential commodities. They may be summarized as basic commodities such as foodstuffs, fuel, clothing, etc.

3.1. **DEFINITION**

Essential Commodities are defined as "Goods considered essential to maintain a minimum acceptable standard of living"\(^{34}\).

The Essential Commodities Act, 1955, gives an all inclusive definition which "means and includes any commodity in the list provided in the schedule to Section 2(a)"\(^{35}\).

At present, the list\(^{36}\) in the Schedule to section 2(a) includes the following essential commodities:

"(1) drugs.

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

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

(3) foodstuffs, including edible oilseeds and oils;

(4) hank yarn made wholly from cotton;

(5) petroleum and petroleum products;

(6) raw jute and jute textiles;

(7)(i) Seeds of food-crops and seeds of fruits and vegetables; (ii) seeds of cattle fodder; and (iii) jute seeds.\(^{37}\)"

\(^{34}\) DICTIONARY, kamcity.com/kamwords/worddesc.asp?WordID=1083

\(^{35}\) THE ESSENTIAL COMMODITIES ACT, 1955.

\(^{36}\) Ibid

However, considering the maintenance of a minimum standard of life and for sustenance of the society many more items can be categorized as essential commodities that must be endeavoured to be made available to the general public at fair price by the Government. Hence, as suggested (under chapter 9), periodic review for the inclusion of items under control is a necessity in the present economic scenario and context.

3.2. NATURE

The human society sustains on basic elements such as food, clothing and shelter etc. The control of items enlisted in the Principal Act is of public nature affecting and used by the whole nation. The nature of provisions of the law which is a socio-economic penal legislation covers very wide jurisdiction and powers. The nature of object of the law being regulatory for public welfare for maintaining or increasing the supplies of essential commodities at fair price, it is essential to regulate and control the production, supply and distribution of such commodities for ensuring its equitable distribution and availability to beneficiaries.

The power to include and remove items on the list of essential commodities has been exercised to review from time to time for the control over their production, distribution and supply in the light of economic liberalization, demand and supply position and the purchasing power of the people, in consultation with the operating Ministries/Departments, as well as, the State Governments/ Union territory administrations.

The number of essential commodities at present has been brought down to 7 through such review exercises.

On the other hand, addition/modification of any essential commodity will depend on circumstances when there is a scarcity or non-availability of the commodity in a situation like war, natural calamities, disruption or threat of disruption of supply of such essential commodities, which cannot be tackled through normal
trade channels requiring government intervention shall be included in the list of commodities.

Earlier, the Central Government duly keeping in view the comfortable availability of food products, issued orders on 15.02.2002 and 16.06.2003 under the Essential Commodities Act, 1955, allowing the dealers to freely buy, stock, sell, transport, distribute, dispose, etc. any quantity in respect of specified foodstuffs.

However, in the wake of the recent rising trend in prices, Government, apart from taking a number of steps to augment supplies, decided to keep in abeyance certain provisions of the Central Order dated 15.02.2002 in so far as they related to wheat and pulses vide Removal of (Licensing Requirement, Stock Limits and Movement Restriction on specified Foodstuffs), Amendment Order, 2006, which was notified on 29.08.2006, to enable the State Governments/UT Administrations to continue to take effective action for undertaking de-hoarding operations under the Essential Commodities Act, 1955. It was also decided with the approval of the competent authority to impose restrictions by keeping in abeyance some provisions of the Central Order dated 15.02.2002 in respect of edible oils, edible oilseeds, rice, paddy and sugar. These Orders have been extended from time to time.

The foodstuff wheat has been removed from this list w.e.f. 01.04.2009. The other Commodities i.e. pulses, edible oils, edible oilseeds, rice, paddy and sugar for which such stock control orders have been issued are valid till 30.09.2011.

The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, is being employed by the State Governments/UT Administrations for the prevention of unethical trade practices like hoarding and black-marketing etc., by detaining persons whose activities are found to be prejudicial to the smooth flow and maintenance of supplies of commodities essential to the community. Detentions are made by the States/UTs in selective cases to prevent hoarding and black-marketing of the essential commodities. Under the
provisions of this Act, the State Governments are required to report the facts together with the grounds of detention and other particulars relating to it, to the Central Government within seven days of approval of the State Government. The nature of detention under the Act is preventive.

The nature of offences of the commodities and any unfair trade and commerce therein, is also protected under the Consumer Protection Act, 1986. The provisions contained therein can also be taken shelter of by the consumers in case the existing complaint mechanism for relief under the Essential Commodities Act, 1955, is insufficient for proper redressal of grievances.

3.3 MEANING AND SCOPE

Essential Commodity means any commodity essential for the sustenance of the life of community and declared as such by the Central Government and included in the list to schedule under section 2(a) to the Essential Commodities Act, 1955. This Act, especially, Section 3, is an example of what appears in practically every statute nowadays, that new enactment is valid not withstanding any law to the contrary.

Section 6 of the Act, lays down that any order made under Section 3 of the Act shall have effect notwithstanding anything inconsistent, therewith, contained in any enactment other than this Act or any order, notification or circular having effect by virtue of any enactment other than this Act.

The Fruit Products (control) Order, 1955, which was made under Section 3 of the Essential Commodities Act, 1955, was held to override the provisions of the Prevention of Food Adulteration Act, 1954, in Hamdard Dawakhana.

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38 Act 10 of 1955.
39 Hamdard Dawakhana v. Union of India AIR 1965 SC 1167 at p. 1172.
Generally, a delegated legislation like a rule or regulation cannot have overriding effect, vis-a-vis, an Act of Parliament as the State Legislature is always *su/b servant*, however, according to the provisions of Section 6, of the Essential Commodities Act, 1955, in the event of any inconsistency the control order will prevail over other Acts whether made by the Parliament or by the State Legislature.

This implies that the Central Government has been delegated unlimited and overriding powers for the purpose of exercising control over the supply, production and distribution etc. of essential commodities.

Furthermore, if the criteria for issuing the control orders are satisfied and adhered to as provided under Section 3 of the Act, the control orders cannot be challenged in any Court of law.

It was held by the Courts that, "...there is no doubt that the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990, will prevail over all other statutory enactments"^40.

Hence, it is beyond doubt that the Essential Commodities Act, 1955, has overriding powers over other enactments. However, the overriding powers are not absolute and unlimited as held in *Arvind Kumar & Brothers*^41 that, a mere irregularity in declaration of stock of food grains found by the authority and an order confiscating entire stock passed by the District Supply Officer during inspection of the places of the business of the petitioner who was carrying on business of sale and purchase of food-grains having a licence issued under the provisions of Gujarat Essential Articles (Control & Stock Declaration) Rules, 1991, was not tenable. Therefore, the entire quantity of food-grains is not liable to be confiscated only on the ground that there were certain irregularities and the confiscation proceedings were therefore, quashed.

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Therefore, the requirement of bonafide and concrete proof of violation of an Order (Control or Licencing) must be established, is a necessary condition for confiscation.

Legislative changes have also expanded the scope of the Law. Section 6A which was newly added to the "Essential Commodities (Amendment) Act, 1966," and in 1967, in this section, in place of 'food-grains, edible oil-seeds or edible oil are seized', for the words 'they may', the words 'it may' and for the words 'may order confiscation of the food-grains, edible oil-seeds or edible oils', the words 'may order confiscation of the essential commodity so seized' were substituted by Sec. 4 of the "Essential Commodities (Second Amendment) Act, 1967".

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

(a) the essential commodity so seized;

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

(c) any animal, vehicle, vessel or other conveyance used in carrying Such essential commodity."

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

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

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

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43 Act XXXVI of 1967.
44 Act 30 of 1974.
the words 'may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied' has been substituted;

(b) after the proviso, the following proviso has been inserted, namely:
Provided further that in the case of any animal, vehicle, vessel or such conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance;

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

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

(i) Order the same to be sold at the controller's price, if any, fixed for such essential commodity under his Act or under any other law for the time being in force; or

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

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

(b) In sub-section (3) where any essential commodity is sold, as aforesaid, the sale-proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—

(i) where no order of confiscation is ultimately passed by the Collector;
(ii) where an order passed on appeal under sub-section (1) of Section 6-C so requires; or
(iii) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner thereof, or the person from whom it is seized.

This section makes necessary provisions for the confiscation of essential commodity seized in pursuance of an order made under Section 3 of the Principal Act and in relation, thereto.

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

Also, since, "the wider powers of confiscation and disposal of property have been conferred by Sections 517 and 523 (new Sections 452 and 457 of 1973) Code of Criminal Procedure Code these powers must be regarded as impliedly limited by the specific provision of Sec. 6-A of the Act. The rule is that where a statute specifies a particular mode of enforcing a new obligation created by it, such
obligation can as a general rule be enforced in no other manner than that provided by the statute.\textsuperscript{45}

However, in the following decisions it has been observed/held by the Courts that the provisions of the Law cannot override or subrogate the provisions of the general, normal jurisdiction of the other statutes such as the Criminal Procedure Code, 1973.

As was held, that, the provision of Section 6-A introduced by Section 4 of the Amendment Act, 1974, is prospective and not retrospective.

In the instant case, Rameshwar Rathod was the owner of the truck which was seized for the contravention of the provision of the Essential Commodities Act, 1955. They filed a writ under Articles 226 & 227 of the Constitution of India, in the High Court to quash the orders of the Judicial Magistrate who has refused to return the vehicle. The High Court held that, “the provision was not retrospective and the Criminal Court was empowered under Sec. 7 of the E.C. Act, to confiscate the vehicle after due and proper inquiry.”\textsuperscript{46} Therefore, the proceedings of the District Collector under Sections 6-A and 6-B of the Act was argued to be quashed. But, dismissing the appeal filed by the State of M.P. against Rameshwar Rathod, the Supreme Court has reiterated the above view and held that, “the Criminal Courts of the country have the jurisdiction and the ouster of the ordinary Criminal Court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary impications of the Act and the Criminal Court retained the jurisdiction in spite of necessary insertion of Provision 6A.”\textsuperscript{47}

In another case, it was again held that if the confiscated goods are pledged to a bank under a cash credit agreement, the effect of legal seizure in confirmation under Section 6A shall not override the rights of the banks. “Collector is restrained from recovering the sales proceeds from the petitioners unless it is found that out of the sale proceeds anything in excess of

\textsuperscript{45} Purshottam Devji v. Emperor 46 Bom LR 449: AIR 1944 Bom 247: ILR 1944 Bom 429

\textsuperscript{46} 1991 (1) Crimes, 222 SC

\textsuperscript{47} Ibid.
the loan of the petitioners with interest and the expenses involved is still liable to be recovered from the petitioners”\textsuperscript{48}.

Also, in the case of Ram Suresh Rai,\textsuperscript{49} a truck seized belonging to revisionist and the other truck belonging to other and in view revisionist invoked Fertilizer Control Order, 1985 and they prayed for the release of truck. This was refused by the Special Judge but the High Court held that, “the truck should be released because otherwise it will deteriorate and will not be in the interest of the revisionist. But, certain conditions were imposed”\textsuperscript{50}.

Nevertheless, the following decisions again asserted the overriding powers of the Law. In this case it was held that, “the power to order confiscation in respect of food-grains, edible oil-seeds and edible oils for contravention of the orders made under the Act is given to the Collector of the District under the amended Sec. 6-A of the Act. He is empowered to exercise the said power whether or not the prosecution is instituted against the accused for contravention of the orders. Thus, the Legislature intended to give the power of forfeiture by an express provision in the statute to the collector whether or not prosecution is instituted. Therefore, the general provisions relating to the confiscation and disposal of property under the Criminal Procedure Code cannot be exercised by the criminal court in the matter of confiscation of foodgrains, etc. The provisions of Sec. 6-A of the Act impliedly limit the powers of the criminal court in the matter of disposal of foodgrains, etc. which are seized in contravention of the Act and orders whether or not prosecution is instituted against the accused. Even after the prosecution in instituted, the Criminal Courts get the power to dispose of food-grains only after the inquiry or trial is over as provided under the various Clauses of the orders made under Sec. 3 or 5 of the Act”\textsuperscript{51}.

\textsuperscript{49} 1996 U.P. Cr. R. 258 (AC)
\textsuperscript{50} Ibid
\textsuperscript{51} State v. Abdul Rasheed AIR 1967 Mys 231: 1967 Cr. LJ 1661
In deciding the above case, the Supreme Court quoted, *India Carbon Ltd & Others*52 and held, after analysing the Constitution Bench judgment in *J.K. Synthetic v C.T.O.*53 that "interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in the Act for the levy of interest on arrears of tax that applied to purchase of sugarcane made subsequent to the date of commencement of the Amending Act, no interest thereon, could be so levied, based on the application of the said Rule 45 or otherwise”54.

However, it was cautioned by the Courts that the overriding powers should not be exercised arbitrarily and without application of judicious mind as has been held that, “a Mere storage without an actual sale, in a place other than the place of business, does not result in contravention of provisions of the licensing order and therefore, does not justify confiscation under Section 6A of the Essential Commodities Act, 1955”55.

The circumstances under which an order of confiscation is liable to be passed by the District Collector under the Essential Commodities Act, 1955, was considered in length in *Satish & Co.*,56 wherein, the High Court sounded a word of caution by observing that, “the discretion in this regard should be exercised judicially and properly, and not arbitrarily”57.

There is certainly a distinction between the contravention of the licensing order, and contravention of the conditions of license issued under the order. The "second Proviso to Section 6A of the Essential Commodities Act 1955, limits the power of the competent authority to recover fine up to the market price for releasing the animal, vehicle, vessel or other conveyance sought to be confiscated”58 is the

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52 1997 (6) S.C.C. 479.
54 Ibid
55 Ibid
57 1983 Ker. L.T. 240
view of the Hon'ble Supreme Court in *Rudolf Fernandez*\(^{59}\), but the Apex Court has held in *Ramesh Chandra Padhi*\(^{60}\) that, "what is to be confiscated is the vehicle and therefore, measure of fine would be relatable to the market price of the vehicle at the date of the seizure of the essential commodity sought to be carried by such vehicle. This decision would also be consistent with the scheme of Section 7 which provides for levy of penalty and section 8 also widens the scope of Sec.7 of the Act, as it expressly lays down that any person who attempts to contravene or abets a contravention of any order made under Sec.3 shall be deemed to have contravened that order"\(^{61}\) as was aptly held earlier by the Hon'ble High Court of Orissa that, "a person attempting to contravene an order made under Section 3 is deemed to have contravened it on the basis of the provisions of this section and is liable to be convicted"\(^{62}\).

The above decisions, in the process, increasing the scope of punishments in essential commodity related offences, also is sufficed and supplemented by the Provisions of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, thus, making the scope of the Law and of punishments for essential commodity related offences and for both making of Control Orders as well as punishments for violation of such Orders, gargantuan. Therefore, *prima facie*, there is very less scope for committing offences and prospective offenders unless there is lacunae and spillage in the proper implementation of the Law.

Scope for grievance redressal has increased considering the applicability of provisions of the Consumer Protection Act, 1986, under the purview of which unfair and deceptive activities have been covered as unfair trade practice and hence punishable.

\(^{59}\) Ibid
\(^{61}\) Ibid