

ESSENTIAL COMMODITIES ACT, 1955

[Act No. 10 of Year 1955, dated 1st. April, 1955]1

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

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

1. Short title and extent

(1) This Act may be called the Essential Commodities Act, 1955.

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

2. Definitions

In this Act, unless the context otherwise requires-

3[(ia) "Code" means the Code of Criminal Procedure, 1973;]

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

(a) "essential commodity" means any of the following classes of commodities-

(i) cattle fodder including oilcakes and other concentrates;

(ii) coal including coke and other derivatives;

(iii) component parts and accessories of automobiles;

(iv) cotton and woollen textiles;

5[(iva) drugs;

Explanation: In this sub-clause, "drugs" has the meaning assigned to it in the clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940),]

(v) foodstuffs, including edible oil seeds and oils;

(vi) iron and steel, including manufactured products of iron and steel;

(vii) paper, including newsprint, paperboard and straw board;

(viii) petroleum and petroleum products;

(ix) raw cotton, whether ginned or unginned, and cotton seed;

(x) raw jute;

(xi) any other class of commodity which the Central Government may, by notified orders,

declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution;

(b) "food-crops" include crops of sugarcane;

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

6(cc) "order" includes a direction issued thereunder;]

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

6[(e) "sugar" means-

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

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

(iii) sugar in process in vacuum pan sugar factory or raw sugar produced therein.

3[(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code.]

3. Powers to control production, supply, distribution etc. of essential commodities

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, 6[or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

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

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

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

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

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

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

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

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

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him,

to the Central Government or a State Government or to an officer or agent of such government or to a corporation owned or controlled by such government or to such other person or class of persons and in such circumstances as may be specified in the order.

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

Explanation 2 : For the purpose of this clause "production" with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;]

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

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

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

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

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

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

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

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

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

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

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

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

12[(3A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the foodstuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

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

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

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

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

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

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

11[(3B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell the Central Government or State Government or to an officer or agent of such government or to a corporation owned or controlled by such government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3A), or such notification having been issued, has ceased to be in force there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to-

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(b) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oil available at reasonable price to the consumers, particularly the vulnerable sections of the consumers; and

(d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.]

6[(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or State Government or to an officer or agent of such government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to

such price of sugar as the Central Government may, by order, determine, having regard to-

(a) the minimum, price, if any, fixed for sugarcane by Central Government under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar,

and different prices may be determined, from time to time, for different areas or for different factories or for different kinds of sugar.

Explanation : For the purposes of this sub-section, "producer" means a person carrying on the business of manufacturing sugar.]

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

(a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons incharge of the management of the undertaking, except insofar as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this section shall,-

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual,-

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

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

4. Imposition of duties on State Government, etc.

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

5. Delegation of powers

The Central Government may, by notified order, direct that 10[the power to make orders or issue notifications under section 31 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by-

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

(b) such State Government or such officer or such authority subordinate to a State Government;

as may be specified in the direction.

6. Effect of orders inconsistent with other enactments

Any order made under section 3 shall have effect notwithstanding anything inconsistent herewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

13[6A. Confiscation of essential commodity

14[(1)] Where any 15[essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, 11[a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such 15[essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector 11[may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order, 16[may order confiscation of-

(a) the essential commodity so seized;

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

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

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

4[PROVIDED FURTHER that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owners 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.]

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

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

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

17[PROVIDED that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force, 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 so fixed.]

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

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

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

(c) where in a prosecution instituted for the contravention of the order in respect of which an order or confiscation has been made under this section, the person concerned is acquitted,

be paid to the owner or the person from whom it is seized.]

6B. Issue of show-cause notice before confiscation of essential commodity

18[(1)] No order confiscating 19[any essential commodity], package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be made under section 6A unless the owner of such 20[21[essential commodity], package, covering, receptacle, animal, vehicle vessel or other conveyance] or the person from whom 22[it is seized]-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the 20[21[essential commodity], package, covering, receptacle, animal, vehicle, vessel or other conveyance];

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

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

5[(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.]

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

6C. Appeal

(1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to 23[the State Government concerned and the State Government] shall, after giving an opportunity to the appellant to be heard, pass such order as it make think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 6A is modified or annulled by 24[the State Government], or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6A, the person concerned is acquitted, and in either case it is not possible for any reason to 15[return the essential commodity seized], 11[such person shall, except as provided by sub-section (3) of section 6A, be paid the price therefor 15[as if the essential commodity] had been sold to the government with reasonable interest calculated from the day of the seizure of 15[the essential commodity] 15[and such price shall be determined-

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of section 3;

(ii) in the case of sugar, in accordance with the provisions of sub-section (3C) of section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3.]

6D. Award of confiscation not to interfere with other punishments

The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

6E. Bar of jurisdiction in certain cases

Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6A, the Collector, or, as the case may be, 25[the State Government concerned under section 6C] shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, 26[any court, Tribunal or other authority] shall not have jurisdiction to make orders with regards to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel, or other conveyance.]

7. Penalties

27[(1) If any person contravenes any order made under section 3,-

(a) he shall be punishable,-

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

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

28[***]

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

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

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

28[* * *]

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

28[***]

29[***]

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

30[7A. Power of Central Government to recover certain amounts as arrears of land revenue

(1) Where any person, liable to-

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

(b) deposit any amount to the credit of any account or fund constituted by or in pursuance of any order made under that section,

makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made shall (whether such order was made before or after the commencement of the Essential Commodities (Amendment) Act, 1984, and whether the liability of such person to pay or deposit such amount arose before or after such commencement) be recoverable by government together with simple interest due thereon computed at the rate of 31[fifteen per cent] per annum from the date of such default to the date of recovery of such amount, as an arrear of land revenue 32[or as a public demand].

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

(3) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, no court, Tribunal or other authority shall grant any injunction or make any order prohibiting or restraining any government from recovering any amount as an arrear of land revenue 32[or as a public demand] in pursuance of the provisions of sub-section (1).

(4) If any order, in pursuance of which any amount has been recovered by government as an arrear of land revenue 32[or as a public demand] under sub-section (1) is declared by a competent court, after giving to the government a reasonable opportunity of being heard, to be invalid, the government shall refund the amount so recovered by it to the person from whom it was recovered, together with simple interest due thereon, computed at the rate of 31[fifteen per cent] per annum from the date of recovery of such amount to the date on which such refund is made.

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

8. Attempts and abetment

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

3[PROVIDED that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature mentioned in sub clause (iva) or sub-clause (v) of clause (a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the court may, notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgement, impose a sentence of fine only.]

9. False statement

If any person,-

(i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may extend to 33[five years] or with fine, or with both.

10. Offences by companies

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

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

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

Explanation: For the purpose of this section,-

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

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

6[10A. Offences to be cognizable and bailable

Notwithstanding anything contained in 16[the Code of Criminal Procedure, 1973 (2 of 1974)], every offence punishable under this Act shall be cognizable 3[and non-bailable] 34[***].

3[10AA. Power to arrest

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no officer below the rank of an officer in charge of a police station or any police officer authorised by him in this behalf in writing, shall arrest any person accused of committing an offence punishable under this Act.]

5[10B. Power of court to publish name, place of business, etc. of companies convicted under the Act

(1) Where any company is convicted under this Act, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact, that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to

be published at the expense of the company in such newspapers or in such other manners as the court may direct.

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

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

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

10C. Presumption of culpable mental state

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

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

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

11. Cognizance of offences

No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860) 35[or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not.]

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

36[***]

37[12A. Constitution of Special Courts

(1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as may special courts as may be necessary for such area or areas as may be specified in the notification.

(2) A special court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation: In this sub-section, the word "appoint" shall have the meaning given to it in the explanation to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless-

(a) he is qualified for appointment as a Judge of a High Court, or

(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AA. Offences triable by Special Courts

(1) Notwithstanding anything contained in the Code-

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

PROVIDED that where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid ; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which a magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a Special Court or the High Court:

PROVIDED that a Special Court shall not release any such person on bail-

(i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and

(ii) where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned:

PROVIDED FURTHER that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act 32[or upon a complaint made by an Officer of the Central Government or a State Government authorised in this behalf by the government concerned] 35[or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not,] take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

PROVIDED that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial:

PROVIDED that such other offence is, under any other law for the time being in force, triable in a summary way:

PROVIDED FURTHER that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "magistrate" in that section included also a reference to a 'Special Court' constituted under section 12A.

12AB. Appeal and revision

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12AC. Application of Code of proceedings before a Special Court

Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.]

5[12B. Grant of injunction, etc. by civil courts

No civil court shall grant an injunction or make any order for any other relief against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such government or officer.]

13. Presumption as to order

Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872 (8 of 1872).

14. Burden of proof in certain cases

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

15. Protection of action taken under Act

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

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

4[15A. Prosecution of public servants

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

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

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

16. Repeal and saving

(1) The following laws are hereby repealed-

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

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

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

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

Foot Notes

1 This Act has been extended to Goa, Daman and Diu by Regulation 12 of 1962, and to Dadra and Nagar Haveli by Regulation 6 of 1963.

2 The words "except the State of Jammu and Kashmir" omitted by Act No. 25 of 1968, w.e.f. 15th. August, 1968.

3 Inserted by Act No. 18 of 1981, for fifteen years, w.e.f. 1st. September, 1982. See Appendix.

4 Inserted by Act No. 92 of 1976.

5 Inserted by Act No. 30 of 1974.

6 Inserted by Act No. 36 of 1967.

7 Substituted by the Adaptation of Laws (No. 3) Order, 1956, for the former clause.

8 Clause (f) re-substituted by Act No. 92 of 1976.

9 Inserted by Act No. 17 of 1961.

10 Substituted by Act No. 66 of 1971.

11 Substituted by Act No. 92 of 1976.

12 Inserted by Act No. 13 of 1957.

13 Inserted by Act No. 25 of 1966.

14 Section 6A renumbered as sub-section (1) thereof by Act No. 92 of 1976.

15 Substituted by Act No. 36 of 1967.

16 Substituted by Act No. 30 of 1974.

17 Substituted by Act No. 18 of 1981, for fifteen years, w.e.f. 1st. September, 1982. Earlier it stood:

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

18 Section 6B renumbered as sub-section (1) thereof by Act No. 30 of 1974.

19 Substituted for words "any foodgrain, edible oilseeds or edible oils" by Act No. 36 of 1967.

20 Substituted for words "essential commodity" by Act No. 30 of 1974.

21 Substituted by Act No. 36 of 1967, for the word "articles".

22 Substituted for the words "they are seized" by Act No. 36 of 1967.

23 Substituted for the words "any judicial authority appointed by the State Government concerned and the judicial authority", by Act No. 18 of 1981, for fifteen years w.e.f. 1st. September, 1982.

24 Substituted for the words "such judicial authority" by Act No. 18 of 1981, for fifteen years, w.e.f. 1st. September, 1982.

25 Substituted for the words "the judicial authority appointed under section 6C" by Act No. 18 of 1981 for fifteen years w.e.f. 1st. September, 1982.

26 Substituted by Act No. 18 of 1981 for fifteen years, for the words "any other court, Tribunal or authority", w.e.f. 1st. September, 1982.

27 Substituted by Act No. 42 of 1986.

28 Proviso omitted by Act No. 18 of 1981, for fifteen years w.e.f. 1st. September, 1982. Earlier it stood as under:

"PROVIDED that the court may, for any adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for term of less than three months."

29 Sub-section (2B) omitted by Act No. 18 of 1981, for fifteen years, w.e.f. 1st. September, 1982. Earlier it stood as under:

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

30 Inserted by Act No. 34 of 1984 w.e.f. 1st. July, 1984.

31 Substituted by Act No. 42 of 1986, for the words "six per cent".

32 Inserted by Act No. 42 of 1986.

33 Substituted by Act No. 36 of 1967, for the words "three years".

34 The words "and bailable" omitted by Act No. 30 of 1974.

35 Inserted by Act No. 73 of 1986, w.e.f. 1st. May, 1987.

36 Section 12 stands omitted by Act No. 18 of 1981, for fifteen years w.e.f. 1st. September, 1982. Before omission, it stood as under:

"12. Special provision regarding fine

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

37 Section 12A has been substituted by sections 12A, 12AA, 12AB and 12AC by Act No. 18 of 1981, for fifteen years w.e.f. 1st. September, 1982. Before omission, it stood as under:

"12A. Power to try summarily

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

PROVIDED that-

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

(b) every such notification in force immediately before such commencement, shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

PROVIDED FURTHER that nothing in the foregoing provision shall affect any case relating to the contravention of a special order specified in any such notification if

proceedings by way of summary trial have commenced before that notification rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.

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

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

(i) cotton or woollen textiles; or

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

(iii) drugs; and

(b) where any notification issued under sub-section (1) in relation to a special order in force, the contravention of such special order,

shall be tried in summary way by a judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

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

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

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

(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and,

where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witness have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent."