

Essential Commodities Act, 1955

Objective of the Act –

- To control the –
 - a) production,
 - b) supply and
 - c) distribution
 of trade and commerce in certain commodities in the interest of the general public
- To **secure equitable distribution** of essential commodities in the interest of the general public
- To **make available essential commodities at fair prices** in the interest of the general public

Note –

The interest of the general public means the interest of the consuming public and not the interest of the dealer

What are Essential Commodities?

Definition of **Essential Commodities** is given under **section 2A** of the Act. It defines the “essential commodity” as a commodity specified in the Schedule.

Schedule of the Act –

- 1) Drugs (here drugs means medicines used for humans and animals);
- 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.
- 8) Masks (2 Ply and 3 Ply and N95) and hand sanitizers

Note –

- **CG has the power to add or remove any commodity from the list given in the schedule.**
- **In case of S. Samuel, MD. Harrisons Malayava v. Union of India, Supreme Court held that Tea is not foodstuff. Anyone who has taken tea would not say that he has taken or eaten food. Thus tea is not a food.**

Authorities responsible to administer the Act –

CG has the power to administer the provisions of the Act by issuing orders/directions notified in the official gazette and by delegating the authority to State Governments and administrators of Union Territories.

Powers of Central Government to control production, supply and distribution etc., of essential commodities – Section 3

A) Power to Issue Orders –

The Central Government can issue order for **regulating or prohibiting the production, supply and distribution of essential commodities** and trade and commerce in the following situations –

- a) when it is **necessary for maintaining or increasing supplies** of any essential commodity;
- b) for **securing the equitable distribution and availability** of essential commodities at fair price; or
- c) for **securing any essential commodity for the defence** of India or the efficient conduct of military operations.

B) Contents of the Order –

Central Government may issue an order which may provide for the following matters –

- for regulating the production or manufacture of any essential commodity by licences;
- for bringing under cultivation any waste or arable land, whether belonging to a building or not, for growing of food crops generally or of specified food crops and for maintaining or increasing the cultivation of food crops generally, or of specified foodcrops;
- for controlling the price at which any essential commodity may be bought or sold.
- for regulating by licences, permits or otherwise 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;
- 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 as specified in the order.
- for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs which in the opinion of the authority making the order, are likely to be detrimental to the public interest;
- for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- for requiring persons engaged in the production of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and record relating to their business and to furnish such information relating thereto as may be specified in the order;
- for the grant or issue of licences, permits or other documents, the charging of fees, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the 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;
- 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 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;

Fixing the Price of Essential Commodities being sold to Government – Section 3(3)

CG has the power to deal with the pricing of the essential commodities particularly when the commodities are being sold to Central/State Government. The price shall be paid as provided hereunder –

•the **agreed price**, where the price can be agreed upon consistently with the controlled price fixed under this section;

•**controlled price**: where no such agreement can be reached, the price calculated with reference to controlled price;

•the price calculated at the market rate prevailing in the locality on the date of sale, where neither of the above points apply.

Fixing the Price of Essential commodities during Emergency – Section 3(3A)

- CG has the power to direct the price at which the foodstuffs in any locality will be sold to general public.
- This direction will be issued only when the Central Government is of the opinion that takings such step is necessary for controlling price rise or preventing the hoarding of any foodstuff in any locality.
- Such order shall be in force for **3 months** only.
- For selling specified foodstuffs in the specified locality, the seller shall be paid price as follows –

•the **agreed price**, where the price can be agreed upon consistently with the controlled price fixed under this section;

•**controlled price**: where no such agreement can be reached, the price calculated with reference to controlled price;

•the price calculated at the **market rate prevailing in the locality** on the date of sale, where neither of the above points apply.

Payment of Procurement Price for Food grains and Edible Oil – Section 3B

where any person is required to sell to the –

- Central Government or
- State Government or
- Any officer or agent of such Government or
- Corporation owned or controlled by such Government

any grade or variety of foodgrains, edible oil and oilseeds in relation to which no notification has been issued Under Section 3(3A) or such notification, having been issued, has ceased to be in force,

procurement price shall be paid irrespective of the provisions of Sub-section (3) having regard to the following facts –

- 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 oils and oilseeds;
- the general crop prospects;
- the need for making such grade or variety of foodgrains, edible oils and seeds available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and
- the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oils and oilseeds.

Fixing Price for Sugar to be Paid to Producer – Section 3(3C)

Where any producer of sugar is required to sell any kind of sugar to the Central or State Government/officer or agent of such government or to any person/class of persons, the producer shall be paid such price for sugar as the Central Government may determine after considering the following factors –

- a) the minimum price, if any fixed for sugar cane by the Central Government
- b) the manufacturing cost of sugar;
- c) the duty or tax, if any, paid or payable thereon; and
- d) securing of a reasonable return on the capital employed in the business of manufacturing sugar.

Note –

CG may fix different prices for different areas from time to time for different factories or for different kinds of sugar.

CG has the power to direct that no producer, importer or exporter to sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters except under the directions given by CG.

However, this provision does not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank

Power to Appoint Authorised Controller – Section 3(4)

- CG has the power to appoint any person as Authorised Controller when it is considered necessary for maintaining or increasing the production and supply of essential commodities.
- The authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government
- Authorised Controller does not have power to give any directions which are inconsistent with the provisions of the Act.
- Authorised Controller has the power to give directions to the undertaking and the person who is responsible to function as a manager of the undertaking or part of it shall comply with such directions.

Issuance and Service of Order – Section 3(5)

- 1) If order to be issued is of general nature then it shall be notified in the official gazette; and
- 2) If the order is issued to a individual then it should be served by –
 - a) delivering it to that individual; or
 - b) if it cannot be so delivered then 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 neighborhood.

The orders passed under the Act is a medium of administering the Act and a proper course of communication to and from the Government

Effect of the Order – Section 6

- Section 6 provides that the order made under Section 3 shall have effect notwithstanding anything inconsistent contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.
- **In simple words, section 6 states that order passed under section 3 shall have overriding effect as long as the order is not inconsistent with the provisions of this Act.**

Burden of Proof in certain cases – Section 14

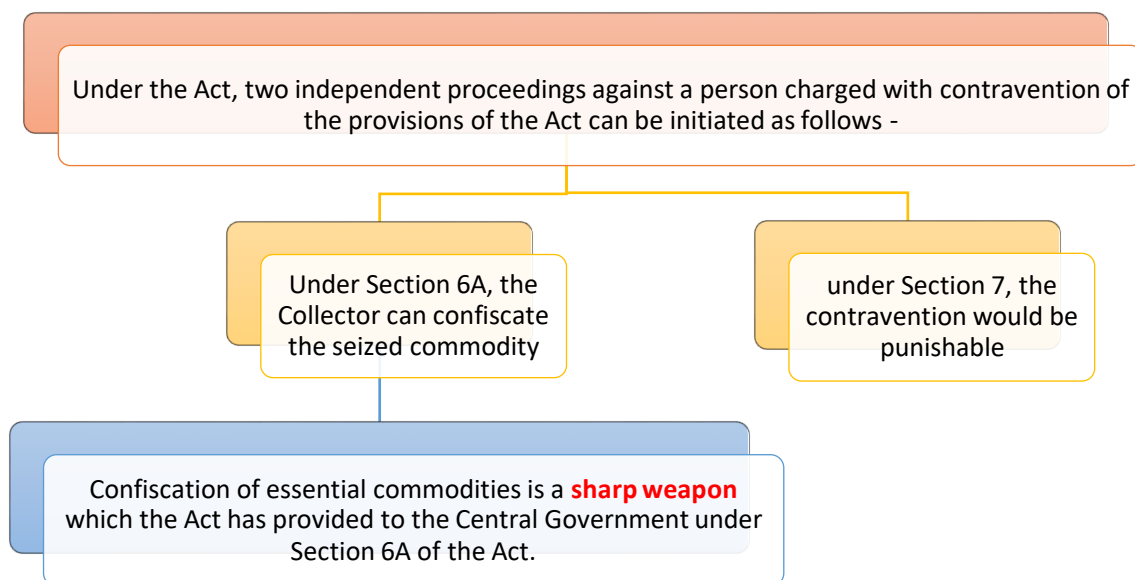
On being prosecuted for contravention of any order made under Section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document such person shall have to prove that he has such authority, permit, licence or other document as the burden of proof lies upon him.

Protection for Acts done in Pursuance of Order – Section 15

- Section 15 provides immunity against action taken in good faith under the Act.
- It lays down that no suit, prosecution or other legal proceedings can be taken 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 of the Act.
- Likewise, no suit or other legal proceedings can lie against the Government, for any damage caused or likely to be caused, by any thing which is in good faith done, or intended to be done, in pursuance of any order made under Section 3 of the Act.

Confiscation of Essential Commodities –

Seizure and Confiscation of Essential Commodities –



- Where any essential commodity is seized in pursuance of an order made under Section 3, a report of such seizure shall be made without any unreasonable delay.
- Report shall be made to the Collector of the district in which such essential commodity is seized.
- The Collector at his discretion, may direct for the production of the seized commodity before him and if he is satisfied that there has been contravention of the order he may pass order for confiscation of –
 - a) the essential commodity so seized;
 - b) any package, covering or receptacle (container) in which such essential commodity is found, and
 - c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.
- No food grains or edible oilseeds seized in pursuance of an order made under Section 3 from a producer shall be confiscated under this section, if the seized foodgrains or edible oilseeds have been produced by him,.
- Provided further that in the case of any animal, vehicle, vessel or other conveyance the owner of such animal, vehicle etc., 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.

Seizure	Confiscation
<ul style="list-style-type: none"> - The expression 'seize' means to take possession contrary to the wishes of the owner of the property and that such action is unilateral action of the person seizing. - The person from whom anything is seized loses, from the moment of seizure, the right or power to control or regulate the use of that thing. - It means 'to take possession of or appropriate in order to subject to the force or operation of a warrant, order of Court or other legal processes. 	<ul style="list-style-type: none"> - Confiscation is a legal form of seizure by a government or other public authority - 'Confiscation' according to Wharton's Law Lexicon, is condemnation and adjudication of property to the public treasury as of goods seized under the Customs Act. - In State of Kerala v. Mathai it was pointed out that confiscation is not to be considered part of the sentence for an offence but is only a mode by which Courts can dispose of

<p>- A reference to some provisions of the Codes of Criminal Procedure shows that the term seizure had been used therein in connection with the taking of actual physical possession of moveable property.</p>	<p>property which comes before it in criminal trials.</p>
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Important Points –

- A commodity that has not been seized cannot be confiscated.
- Power is conferred on the Collector to confiscate any animal, vehicle, vessel or other conveyance if used in carrying the essential commodities
- The Collector has no jurisdiction to go into the validity of the seizure; he could only confiscate goods, out of those seized, in respect of which contravention is established.
- Even though Section 6A authorizes confiscation of seized goods it does not say that the entire seized quantity should be directed to be confiscated. It is left to the discretion of the Distt. Revenue Officer and the appellate authority to decide whether the entire seized stock should be confiscated or only a portion of it.

Sale of the Confiscated Commodity – Section 6A(2)

Where the Collector, on receiving a report of seizure or on inspection of any essential commodity 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 –

- order the same to be sold at the controlled price, if any, fixed for such essential commodity
- where no such price is fixed, order the same to be sold by public auction.

Provided that in case of foodgrains, 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 the retail sale of such foodgrains to the public.

Disposal of Sale Proceeds of Confiscated Goods – Section 6A(3)

the sale proceeds of the essential commodity sold shall be paid to the owner or person from whom it is seized after deducting the expenses of any such sale or auction or other incidental expenses in the following circumstances –

- where no order of confiscation is ultimately passed by the Collector;
- where an order passed on appeal under Sub-section (1) of Section 6C so requires, or
- 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.

Issue of Show Cause Notice before Confiscation of Essential Commodity – Section 6B

- Before passing an order for confiscation the owner of the essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized is required to be given a notice in writing informing him of the grounds on which it is proposed to confiscate the above goods to provide him an opportunity of making a representation in writing within a reasonable time and give him a reasonable opportunity of being heard in the matter.

- No order of confiscation can be made if the owner of the confiscated animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that the said modes of transport owned by him were used in carrying the essential commodity without his knowledge or connivance of himself or his agent, if any, and each of them had taken the necessary precautions against such use.
- It is not sufficient for the owner to prove that the vehicle carried the essential commodity without his knowledge or concurrence. He must also prove that the vehicle was used without the knowledge, or concurrence of the person in charge of the vehicle
- In addition, he must prove that not only he but also the person incharge of the vehicle had taken all reasonable and necessary precautions against such use

Appeal against Confiscation Order – Section 6C

- Any person aggrieved by an order of confiscation may appeal to the State Government concerned **within 1 month** from the date of passing the order.
- The State Government shall give an opportunity to the appellant to be heard and pass such order as it may think fit.
- If the appeal has been decided in favour of appellant, he is entitled to the possession of the confiscated goods and if it is not possible for any reason to return the essential commodity seized from him, such person shall be paid the price therefor as if the essential commodity had been sold to the Government with reasonable interest calculated from the day of seizure of essential commodity.

Offences and Penalties –

Cognizance of offences – Section 10A

Notwithstanding anything contained in the Criminal Procedure Code, 1971, every offence punishable under the Act shall be cognizable.

Note –

A cognizable offence is one, where, under the Criminal Procedure Code or any other law in force, a police officer may arrest a person without a warrant.

Conditions to be satisfied before Court can take cognizance of any offence punishable under the Act – Section 11

- there must be a report in writing
- the report must be made by a public servant, or any aggrieved person or any recognised consumer association.

Prosecution of Public Servants – Section 15A

If any public servant is accused of any offence alleged to have been committed by him while acting, in the discharge of his duties, in pursuance of any order made under Section 3, no court can take cognizance of such an offence except with the previous sanction—

- A) **of the Central Government in the case of a person who is employed in connection with the affairs of the Union; and**

- B) of the State Government in the case of a person who is employed in connection with the affairs of the State

False Statement – Section 9

A person shall be punishable under Section 9 with **imprisonment for a term which may extend to 5 years or with fine or with both for the following offences:**

- a) 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 which he knows or has reasonable cause to believe to be false or does not believe to be true, or
- b) 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.

Offences by Companies –

- 1) If the person contravening an order under Section 3 is, a company, every person who, at the time of the contravention, was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the contravention, and shall be liable to be punished accordingly.
- 2) Any such person, can, however, escape liability if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it.