



DRACONIAN ESSENTIAL COMMODITIES ACT UNDERGOES AMENDMENT

Introduction

The Essential Commodities Act (ECA), 1955 was enacted with an objective to control the production, supply and distribution of, and trade and commerce in certain goods such as vegetables, pulses, edible oils, sugar, etc., which are treated as essential commodities. The purported aim of this Act is to ensure affordability of essential commodities for the poor by restricting hoarding. It is an overarching legislation regulating agricultural marketing and production. There is no exhaustive list of what all commodities are essential. The Section 2A of the Act, provides that,

"An essential commodity is a commodity specified under the Schedule of the Act."

Major commodities grouped under the Act are – essential pharmaceutical drugs, fertilizers, foodstuffs (including edible oil and seeds, *vanaspati*, pulses, sugarcane, rice, paddy; hank yarn made wholly from cotton; petroleum and petroleum products; raw jute and jute textile; onion and potato, seeds of food-crops and seeds of fruits and vegetables, jute seed and cotton seeds.

The Act empowers the Central Government, in the interest of the public, to add or remove any commodity under the Schedule, in consultation with the state governments.

Under the Act, the powers to implement the provisions of the Act are delegated to the states. When the price of any of these essential commodities rises, the regulator can impose stockholding limits on the commodity, restrict movement of goods, and mandate compulsory purchases under the system of levy. Consequently, all wholesalers, distributors, and retailers dealing in the product must reduce their inventories to comply with the holding limit.

Orders Promulgated to meet the Pandemic Situation

In a pandemic stricken world, lockdown was the most viable option to control the spread of the dreadful virus. When the government announced complete shutdown of activities and mandated people to stay inside, it had imposed a responsibility on government to create a conducive environment where people could feel more safe and secure. They get unhampered supply and distribution of food and other essentials. Between the new normal of social distancing, wearing masks and sanitization, government was faced with the new challenge of increased demand, low supply and price hike in masks and sanitizers.

In an effort to ensure the availability of quality masks and sanitizers and to make sure that it is reachable and affordable to common man, government issued various orders under Essential Commodities Act, 1955 (EC Act). It not only included masks and sanitizers within the ambit of essential commodities, the raw materials involved in manufacturing these materials shall also be considered essential commodities.

Essential Commodities Order 2020 dated 13th March 2020

In light of the Covid 19 situation, Central Government passed the above Order wherein it included masks and hand sanitizers in the Schedule of Essential Commodities. The objective of the Order is to regulate the production, quality, distribution, logistics of masks (2 ply and 3 ply surgical masks, N 95 masks) and hand sanitizers.



Ingredients and prices of the ingredients as raw material of Essential Commodities Order, 2020 dated 19th March, 2020

Through this order, it was clarified that, raw materials used in manufacturing of an essential commodity shall also be treated as an essential commodity. The order also regulated the price of alcohol used in manufacturing of hand sanitizers not to exceed that of the price prevailing in the market as on March 3, 2020.

Fixation of prices of masks and hand sanitizers order 2020 dated 21st March 2020

Through this order the prices of the following were fixed.

Item	Description
Melt Blown non-woven fabric used in manufacturing masks (2ply & 3ply)	Not more than the prices prevailing on 12.02.2020
3 ply surgical masks	Prices prevailing on 12.02.2020 or Rs 10 per piece whichever is lower
2 ply surgical masks	Shall not be more than Rs 8 per piece
Hand sanitizer	Shall not be more than Rs.100/- per bottle of 200ml

Further order dated March 24, 2020 stated that, the retail prices of 3ply surgical masks containing a layer of Melt Blown non-woven fabric shall not be more than Rs.16/- per piece.

Essential Commodities Amendment Ordinance 2020 — A Historic Move

On June 5, 2020, the President of India promulgated the Essential Commodities (Amendment) Ordinance, 2020 (Ordinance) amending more than six-decade-old law the-Essential Commodities Act, 1955 (Act). The Amendment aims to “deregulate” agricultural commodities like cereals, pulses, oilseeds, onions and potatoes. It is being asserted that these changes in law will go a long way in helping India’s farmers while also transforming the agriculture sector. The proposed amendment to the Essential Commodities Act will allay fears of private investors of excessive regulatory interference.

The government besides bringing Amendment to the Essential Commodities Act, has promulgated two more Ordinances to facilitate farmers and allowing farmers to engage with processors, aggregators, large retailers, exporters. The Farming Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020 ensures barrier free trade in agriculture produce. It will not bind farmers to sell their crop only to licensed traders in the APMC (Agricultural Produce Market Committee) *mandis* of their respective *talukas* or districts. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 will empower farmers for engaging with processors, aggregators, large retailers, exporters on a level playing field without any fear of exploitation.

These Ordinances come against the backdrop of the government reaching out to financially weaker sections including farmers amid growing criticism that the lockdown, while necessary to control the spread of Covid-19, was unplanned. This has forced a large number of migrant workers to head back to their villages from the cities. These Amendments to the ECA will remove fears of private investors of excessive regulatory interference in their business operations. Thereby, this facilitates long-pending agrarian reforms, enabling the transformation of the sector. While India has become surplus in most agri-commodities, farmers have been unable to get



better prices due to lack of investment in cold storage, warehouses, processing and export. The investment in the sector gets waste due to hanging sword of Essential Commodities Act (ECA).

Need for the Amendment

Successive governments in India have said that the *Essential Commodities Act (1955)* disincentivises investment in crop warehouses and storage, and affects the efficient development of agricultural markets by creating market distortions. As agriculture is a seasonal activity, it is essential to store produce for the off-season to ensure smoothened availability of a product at stable prices throughout the year.

The ECA interferes with this mechanism by disincentivising investments in warehousing and storage facilities due to frequent and unpredictable imposition of stock limits. As stockholding limits apply to the entire agriculture supply chain, including wholesalers, food processing industries and retail food chains, the Act does not distinguish between firms that genuinely need to hold stocks owing to the nature of their operations, and firms that might speculatively hoard stocks.

According to the Economic Survey 2019-2020, frequent and unpredictable imposition of blanket stock limits on commodities under ECA neither brings down prices nor reduces price volatility. Further considerable administrative effort goes into enforcement of ECA with very low conviction. The Act has become outdated as it was passed in 1955 in an India worried about famines and shortages; it is irrelevant in today's India.

Changes Introduced in Essential Commodities Act, 1955 by Ordinance

1. **Regulation of food items:** the Central Government can, in public interest, declare any commodity (such as food items, fertilizers, and petroleum products) as essential and under Section 3 of the Act has been given powers to control production, supply, distribution, etc., of essential commodities.

The Ordinance provides that the Central government may regulate the supply of certain food items including cereals, pulses, potato, onions, edible oilseeds, and oils, only under extraordinary circumstances, which may include: war, famine, extraordinary price rise and natural calamity of grave nature.

2. **Imposition of stock limit:** The Act empowers the Central government to regulate the stock of an essential commodity that a person can hold. The Ordinance requires that imposition of any stock limit on certain specified items must be based on price rise and an order for regulating stock limit of any agricultural produce may be made only if there is: (i) 100 per cent increase in retail price of horticultural produce; and (ii) 50 per cent increase in the retail price of non-perishable agricultural food items. The increase will be calculated over the price prevailing immediately preceding twelve months, or the average retail price of the last five years, whichever is lower.

The Ordinance provides that any stock limit will not apply to a processor or value chain participant of agricultural produce if stock held by such person is less than the: (i) overall ceiling of installed capacity of processing, or (ii) demand for export in case of an exporter. A value chain participant means a person engaged in production, or in value addition at any stage of processing, packaging, storage, transport, and distribution of agricultural produce.

3. **Applicability to Public Distribution System:** The provisions of the Ordinance regarding the regulation of food items and the imposition of stock limits will not apply to any government order relating to the Public Distribution System or the Targeted Public Distribution System. Under these systems, foodgrains are distributed by the government to the eligible persons at subsidised prices.

With the amendment to Essential Commodities Act, commodities like cereals, pulses, oilseeds, edible oils, onion and potatoes will be removed from list of essential commodities. After the amendment, the EC Act now allows clamping of stock limits on agricultural commodities only under "very exceptional circumstances" like natural calamities and famines. This will enable better price realisation for the country's farmers and remove

fears of private investors of excessive regulatory interference in their business operations. The freedom to produce, hold, move, distribute and supply will lead to harnessing of economies of scale and attract private sector/foreign direct investment into agriculture sector. It will help drive up investment in cold storages and modernization of food supply chain.

While liberalizing the regulatory environment, the amendments have also ensured that interests of consumers are safeguarded. This will help both farmers and consumers while bringing in price stability. It will also ensure that in situations such as war, famine, extraordinary price rise and natural calamity, such agricultural foodstuff can be regulated and their availability is ensured to the consumers. The amendments will create competitive market environment and also prevent wastage of agri-produce that happens due to lack of storage facilities. In a larger picture, the amendments will have a positive impact on competitiveness, foreign investment and price fixation of food stuffs which will benefit the consumers at large. ■

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10. *Ibid.*
11. Section 2
12. Subsection 1

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