

DRAFTING A FOOD SECURITY LAW FOR THE FASTING AND THE FEASTING INDIA

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Abstract

It is well known that the UPA has proposed to introduce the National Food Security Bill in November 2009. Without doubt, a country that has been languishing way down at 96 among 119 developing countries on the Global Hunger Index cannot wait longer to have an effective food security law enacted.

The “lofty” promises of the Bill have rightly drawn criticism from all quarters. In fact the drawback of the Bill lies in its effective implementation through the present porous Public Distribution System. Considering that large amounts of food grains and sugar are routinely siphoned off from the PDS, leaving the genuine BPL and other ration card holders to starve under different welfare schemes of the government, the UPA government has shown restraint over passing of the bill with a directive to the respective state governments to plug loopholes in the system.

The study traces in detail the structure and the authorities that run our PDS and its operational and legal framework in order to understand how this so called “largest system of public distribution in the world” actually works. Given the country’s large size, varied terrain and large scale poverty, it isn’t difficult to understand the plethora of possibilities that the PDS offers to its operators to make a quick buck. This brings the author to analyse the effectiveness of the legal framework of the PDS which is supported by the Essential Commodities Act, 1955 and the Prevention of Black Marketing Act, 1980.

Modes of contraventions of Centre and State Orders issued under these Acts are studied on a micro level. This is followed by the statistics of the Planning Commission and other research papers that reveal these contraventions at the macro level.

It is disquieting to know about the large scale diversions, the collusion and apathy of those who run the PDS and the enormity

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of the problem at hand.

What needs to be seen is whether the UPA would take concrete steps to streamline the PDS to make it more accountable and transparent or merely announce this Bill with fanfare as a populist measure with an eye on the next elections.

Introduction

Seeing the popularity of the National Rural Employment Guarantee Scheme (NREGS) which helped the Congress to win the 2009 parliamentary elections, the newly constituted Government has thought of bringing out the National Food Security Act and has been working on it. Without doubt, a country that has been languishing way down at 96 among 119 developing countries on the Global Hunger Index cannot wait longer to have an effective food security law enacted. The Index ranks countries on a 100-point scale with zero being the best score (no hunger) and 100 being the worst.¹

As top officials from multiple ministries sat working over the crafting of the draft legislation on food security aimed at delivering food to the poorest of India, a grim reminder of the depth of deprivation in India emerged from its most populous state, Uttar Pradesh (UP). Frail, malnourished children eating moist lumps of mud laced with silica—a raw material for glass sheets and soap² to overcome hunger.

“It tastes like powdered gram, so we eat it,” said Soni, 5, a listless girl with a protruding belly, dry whitish hair and ashen skin. With most families working at village Ganne’s (in UP) quarries reduced to one or two daily meals of boiled rice and salt-with a watery vegetable on a lucky day—the mud is a free but deadly option at the 20 stone quarries sustaining the poorest villagers.

Similar stories like these continue to emerge from different parts of India every alternate day.³ These stories are the latest indicator of the frailty of India’s vast but inefficient and corruption-ridden social-security

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1. Global Hunger Index 2008 released by Washington-based International Food Policy Research Institute in October 2008.
 2. Not enough food, so children learn to eat mud, Hindustan Times, Allahabad (UP), April 5, 2010.
 3. Govt.wakes up to hunger deaths, Hindustan Times Mumbai, December 14, 2010, where tribals kill hunger with flowers, Hindustan Times, Banda (Uttar Pradesh), April 18, 2010, Hot rod horror brands children in Jharkhand, Hindustan Times, Ghatsila, (Jharkhand), April 20, 2010.The dying heart of India Hindustan Times, Satna (Madhya Pradesh), May 4, 2010, Straight from cradle to grave Hindustan Times, MP, June 10, 2010,India’s safety nets collapse in Balangir Hindustan Times, Orissa, March 29, 2010, What India’s growth story conceals, Hindustan Times, Delhi, October 14, 2010.

systems. A commonality in all these stories is that their dead, starving people had no access to the five major national schemes (subsidised food, child health care, mid-day meals, jobs for work and old-age pensions each targeted at the poorest of India)⁴ on which India is slated to spend Rs 118,000 crore(\$ 261 billion) in 2010-11. Most of them had not even heard of them. Those among the dead who did happen to be the beneficiaries of one or more of these State sponsored schemes starved to death because of inadequate implementation in their area⁵.

Contrast the above stories of starvation deaths with the following, “As prices soar, tonnes of grain rot”⁶, “In India the granaries are full but the poor are hungry”⁷, “Food meant for poor diverted to Nepal, Bangladesh, admits Government⁸,” 1.3 lac tonnes of grain wasted”⁹. The Supreme Court’s diktat to the Government recently speaks volumes about India’s Public Distribution System that nullifies all State endeavour to tackle hunger in the country. “People are dying of hunger. 67,539 tonnes rotted in godowns of Punjab and Haryana during 2009-10. You are not providing them grain. This litigation has been going on for the past 10 years.... It is an “extremely serious matter”¹⁰In fact the Court ordered distribution of grains free of cost to the poor instead of leaving it for rats. These contradictory stories of starvation and excess grains rotting in our warehouses necessitate immediate improvements in the distribution of foodgrains through our present Public Distribution System.

Inter-Relationship between Poverty and Hunger

Poverty, food insecurity, malnutrition, and hunger are inter-related concepts. Poverty is caused by assetlessness, low income levels, hunger, poor health, insecurity, physical and psychological hardship, social exclusion, discrimination, and political powerlessness.

Indian poverty is predominantly rural, where landless labourers and casual workers are the worst-off economic group. But even within this

4. The PDS deals with distribution of subsidised food grains, child health under the ICDS or Integrated Child Health Development Scheme targets child health and malnourishment, Mid Day Meals are targeted at tackling malnutrition and illiteracy for school going children of State schools, the NREGA is an employment guarantee scheme for the rural poor, supra note 1, pension to the destitute is provided under the Annapurna Yojana translated as the National Old Age Pension Scheme (NOAPS).

5. www.foodjustice.net Hunger Alert Update: AHRC-HAC-005-2009.

6. Times of India, July 27, 2010.

7. Guardian Weekly, September 7, 2010.

8. Times of India, December 12, 2010.

9. Times of India August 31, 2010.

10. Grain rot deeper than govt. claim: SC Hindustan Times, New Delhi, October 19, 2010 the litigation relates to Right to Food by the NGO People’s Union for Civil Liberties.

group, households headed by women, the elderly and ethnic or religious minorities constitute the poorest of the poor. In India and Nepal there is the added dimension of caste. In India persons from ‘scheduled castes’ and ‘scheduled tribes’ constitute 25% of the rural population but account for 42% of the poor.

The rural poor are primarily those with limited ownership of assets – including land. The vast majority of the rural poor in India are engaged in agriculture (including fishery and livestock) either as agricultural wage labourers or marginal farmers. The urban poor are characterised by extremely poor living conditions – in slums, or often on the road itself. They are generally first generation migrants with no security of jobs.

It is estimated that one-third of the world’s poor reside in India, and there are more poor people in India than in all of Sub-Saharan Africa. The definition of the poverty line varies from country to country, but the most common measure is the ‘head count index’ which is expressed in terms of the number of people or percentage of the population falling below either (a) a given level of daily energy intake, or (b) the income level required to purchase these needs.¹¹ In India households are categorized into two main categories - Below Poverty Line (BPL) and Above Poverty Line (APL) households. Defining BPL & APL families is based on the criteria like annual income, land holding, type of dwelling etc., and their quota of subsidised foodgrains is fixed accordingly. The different State Governments undertake the responsibility to identify the eligible households/ beneficiaries and issue a ration card also known as household supply card which enables them to avail the prescribed quantity of foodgrains from the government run Public Distribution System.

The Issue of Food Security

“Food security” refers to the ability of a community, family or individual to be able to eat sufficiently, in terms of both quantity and quality, as prescribed by international standards.¹² It is conventionally viewed in terms of three components, food availability, food access and food utilisation.

Food availability is the sum of domestic production, imports (both commercial and food aid) etc. to meet demands of a growing population and changing dietary needs;

11. *Ibid*, p. 3.

12. ‘Setting a Palestinian National Food Security Strategy’ by John Ashley and Nedal Jayousi: Palestine-Israel Journal Vol.13, 2006.

Food access is a measure of people's entitlement to food, which is the amount they can either produce (net of feed, seed and losses) or purchase or otherwise receive (e.g. through public food distribution systems).

Food utilisation relates to the capacity of an individual to absorb and utilise the nutrients in the food s/he consumes.¹³

Food availability

The component of food availability as a function of production of foodgrains in India is discussed first. Policy in India since Independence has focused on reaching self-sufficiency in domestic food production. The government has pursued vigorous policies of agricultural development through a range of instruments, including public sector research, provision of agricultural infrastructure such as irrigation systems, subsidies on inputs such as electric power, water and fertiliser, increasing the minimum support prices of main crops and the operation of a buffer stock.

This policy has resulted in unacceptably high levels of food stocks in recent years. India produces around 80 million tonnes of wheat. Given that procurement and subsequent stocking is far in excess of what is required, the government ends up hoarding food grains quite inadvertently in the process.¹⁴ The current government has proposed in the Food Security Bill that it would need 60 million tones of grains to meet the ambitious targets of the proposed bill. This means greater precision in identifying the poor and reaching them.¹⁵

Food Access

Almost all commentators, including the citizens and governments of developing countries, identify chronic and pervasive poverty as the most basic cause of food access problems. Five year development plans laid down by governments throughout Asia have for many decades taken poverty reduction as their central purpose.¹⁶

Government intervention to tackle hunger

Two basic approaches are used in India to improve poor people's access to food: the direct approach of public distribution of subsidised food,

13. Working Paper 231 Food Security and the Millennium Development Goal on Hunger in Asia Gerard J. Gill, John Farrington, Edward Anderson, Cecilia Luttrell, Tim Conway, N.C. Saxena and Rachel Slater <http://www.odi.org.uk/resources/download/1266.pdf>.

14. Revamping food procurement and pricing policies. By Madan Sabnavis. *Yojana*, p. 1, October 10, 2010 issue.

15. Amar Ujala Newspaper , August 25, 2010.

16. *Ibid*, p. 12.

and the indirect approach of developing and implementing poverty reduction strategies.

Since Independence, the main pillars of the Government of India's food security strategy have been these three:

(a) Productivity-enhancing investments in agriculture

The policy approach to agriculture, particularly in the 1990s, has been to secure increased production through subsidies on inputs, increasing the minimum support price discussed herebelow and through building new capital assets in irrigation.

(b) Price support, buffer stock and subsidised provision of food

Minimum Support Price, procurement and distribution are three extremely critical government policies.

Minimum Support Price (MSP): The objective of having an MSP programme is to ensure that the farmers get a remunerative price for their produce. The scientific basis for calculating this MSP involves looking at various factors including cost of production, cost of living, price parity etc. It tells the farmer that he is assured of a minimum price at the time of harvest and hence can cultivate the crop of his choice. From the point of view of the farmers this is an excellent scheme as they are assured of a price for their produce and a buyer.

The MSP issue is linked with procurement, which is an enormous exercise undertaken by the government. There are three motivations for procurement from the point of view of the government. The first is to provide for food security so that there are stocks that can be used in times of a crisis. The second is to provide for subsidised grains so that the poor have access to cheap food grains either directly or through specific government schemes and the third is to stabilise prices. This is done by selectively releasing stocks into the market through the open Market Schemes to augment supplies and lower prices.

Presently procurement is mainly in rice and wheat and to a very minimal extent in coarse cereals. This encourages farmers to grow more of rice and wheat and deliver to the government which is represented by the FCI or the Food Corporation of India, the main agency for handling foodgrains on behalf of the Central government responsible for procuring, storage, and release of grains in the PDS. The fact that the procurement is an open ended scheme means that there are no limits to what the FCI can pick up. While procurement is open ended, distribution through the PDS

and other schemes is more or less fixed and grows marginally every year being related to population growth and development schemes being pursued by the government. The result has been the build up of high quantities of food stock.¹⁷

c) The third area is in distribution where procured food grains are distributed across the states under various schemes

The Public Distribution System and its variants focus on the subsidised distribution of basic (mainly food) commodities to some 75 million poor households through some 0.5 million Fair Price Shops nationwide. The Government also operates a large number of Centrally Sponsored Schemes (CSS), some of which involve payment or transfer 'in kind', e.g. in the form of food for work or midday school meals.

Cash transfers of various kinds also form a (currently very minor) part of social protection and food security policy. They are made to 'deserving' categories of the population (such as old age pensioners, and, in some States, widows), e.g. The Annapoorna Yojana translated as the National Old Age Pension Scheme (NOAPS) was introduced as a 100 per cent Centrally Sponsored Scheme on August 15, 1995. Under this scheme about 60 lakh old people get monthly pension ranging from 100 to 250 Rs per month.

Chronic Food Insecurity, Nevertheless

Despite various government related donor actions, almost every national social security programme, theoretically serving as cradle-to-grave buffers against destitution and hunger has failed. The irony is that every national anti-poverty and anti-hunger plan, on which the Centre had budgeted Rs1.18 lakh crore (\$2.61 thousand billion) nationwide in 2010-11, is in place in every district of the country. It is enough to stave away famine and official starvation deaths, yet hunger continues to take its toll. Of the current total population of 1.15 billion people¹⁸, India's hungry stand at 237.7 million at the last count of which the government is able to target merely 75 million poor households.

The Proposed National Food Security Act, 2010

The draft Food Security Bill has proposed 25 kg of wheat/ rice to BPL households at Rs. 3/- per kg. For some, it is just old wine in a new

17. India's mountains of shame, Hindustan Times, Ludhiana, March 30, 2010.

18. Current Population of India in 2010 is around 1,150,000,000 (1.15 billion) people. <http://www.indiaonlinepages.com/population/india-population.html>

bottle and would rely excessively on existing infrastructure and logistical support of the public distribution system (PDS). There are possibilities of increased food subsidies amounting to Rs. 70,000 crore per annum if the Bill becomes a law. The Government has been increasing the annual food subsidy from Rs 2,450 crores (\$0.54 billion) in 1990-91, Rs. 13,675 crores (\$3.03 billion) in 2001-02, to 58,000 crores (\$ 12 billion) in 2010-11. A further increase is likely to put the government in a tight corner.

The Bill has been criticized on how effectively would it disburse foodgrains to the targeted families through the present Public Distribution System (PDS), to achieve cent percent food security.

As pressure builds up on the government to finalize the draft food security bill, a top priority of UPA is reforming the TPDS as a part of the draft food security bill, so as to include the vulnerable sections of society. In fact the dilemma exercising the current government is not the proposal and framing of a Food Security Law for India but its effective implementation through the nation wide network of the PDS.

No doubt the UPA government has shown great caution and restraint on the issue of passing this bill. It has also announced its plan of setting up of a “monitoring system” to strengthen the PDS¹⁹ by making it more transparent and accountable. This step alone will render the proposed food bill useful to the country’s masses.

In order to plug the loopholes in our PDS, we must understand its structure, the authorities and agencies that run it and the people who man it.

India’s Public Distribution System (PDS)

The task of achieving a fool proof PDS is a stupendous one as we have been living with an incredibly leaking PDS since pre independence days (from World War II onwards) However, it was only in 2005 that the Planning Commission reported that the vast network of 480,000 (almost 0.5 million) Fair price Shops delivered only 42 per cent of grains meant for the BPL families

Not only have leakages and pilferages been consistently overlooked, no one has been held accountable for siphoning off 58 per cent of the subsidized food meant for the poor year after year!²⁰

19. Government plans “monitoring system“ on food subsidy Monday, June 7, 2010 3:23:34 PM by IANS.

20. Food Security Act: Implementation, not intention, holds the key by Sudhirendar Sharma 09 Jul 2009 <http://www.d-sector.org/article-det.asp>.

Rationale of a Public Distribution System

Distribution provides a vital link between the producer and consumer by making available goods and services. It encompasses all movement starting from the transportation of raw material to the delivery of the finished products to the customers. The distribution system owned and controlled by the government or any public agency is termed as public distribution system.

The PDS in India is basically a retailing system supervised and guided by the state to ensure ready availability of essential goods at reasonable prices to the common people at household level, especially the weaker sections of the society who cannot afford to depend upon the market forces to get their supplies.²¹ This requires a long term strategy for continuous supply of essential commodities to the common man through a public procurement and distribution system at fair prices in urban and rural areas.

The PDS as it stood earlier, was however widely criticised for its failure to serve the population below the poverty line, its urban bias, negligible coverage in the states with the highest concentration of the rural poor and lack of transparent and accountable arrangements for delivery. Realising this, the government streamlined the PDS, by issuing special cards to families Below Poverty Line (BPL) and selling foodgrains under PDS to them at specially subsidised prices with effect from June 1997. This new PDS was named the Targeted Public Distribution System (TPDS). Its network of about 0.5 million Fair Price Shops (FPS) across the country makes the TPDS the largest distribution network of its type in the world²². It is the most far reaching in terms of coverage as well as public expenditure on subsidy.

The Framework of the PDS

The PDS in India may be looked at from three angles

- 1 The policy framework
- 2 The operational framework
3. The legal framework

1. The policy framework

It consists of (a) the broad policy guidelines and directions given by the central and state governments to the PDS ever since the inception of

21. Production and management of State level public enterprise. by Atmanand. Mittal Publications, 1997, p. 633.

22. Food Security through Identity Management by Dr. Lakshmi Tripuraneni, p. 1.

planning in India. It covers government subsidy per year on essential foodgrains and sugar, distribution of food at reasonable prices to the common people.

(b) A system of monitoring production of essential commodities and their rational distribution.

2. The operational framework

The operational aspects of the PDS range from production and procurement from farmers from all corners of the country, to the ultimate distribution to the customers through the Fair Price Shops.

At the procurement stage the FCI and the Civil supplies ministry's co ordination in different states²³ plays a dominant role in the procurement of agricultural commodities. The FCI was established under the Food Corporation Act of 1964 and started functioning in January 1965. It acts as a main agency for handling foodgrains on behalf of the Central government and functions as a major instrument for achieving the following objectives

1. to procure a sizeable portion of marketed surplus grains at incentive prices from the farmers on behalf of the Central and State governments (ensuring to forego some portion for the personal use the farmers);
2. to ensure timely release of stocks through the PDS so that consumer prices do not rise unduly;
3. to minimize inter regional price variations; and
4. to build up buffer socks of foodgrains by internal procurement and imports.²⁴

3. The legal framework

The legal framework of our PDS is made of the Essential Commodities Act 1955 (ECA) and the Prevention of Black Marketing Act 1981. Also are various Orders and Rules passed by different states relating to essential commodities?

From this doctrinaire structure, we come to the real picture of the PDS as it functions in the country.

The Operation and Logistics of the TPDS

The PDS is largely the responsibility of state governments which

23. India is a union of 28 States and 7 Union Territories (UT).

24. *Supra n.* 19, p.643.

selected for Antyodaya Anna Yojana (AAY) Scheme and Annapoorna scheme. For each of these categories, the states issue ration cards of different colors to the beneficiaries to easily differentiate between them. The supplies given to the BPL families through ration shops on a monthly basis are more in quantity and lesser in price as compared to those earmarked for APL families.²⁶

This entire system of procurement of food grains from the producer farmer to its movement to state owned godowns and then to the respective districts and then to the FPS to be delivered to the consuming public constitutes our PDS system.

The FCI transports foodgrains from surplus states to deficit states. It procures stocks from grain markets (anaaj mandis) and purchase centers. This is stored in the nearest state depot and then dispatched to the recipient state within a limited time.

An average of 12, 00,000 bags of 50 kg weight of food grains or sugar are transported from the producing states to the consuming states by rail, road, inland waterways etc. everyday.

The State Civil Supplies Corporations make advance financial arrangement with the FCI to procure the centrally allotted quantity of food grains and sugar from the rail and road connected Principal Distribution Centres (PDC) of the FCI. (e.g. at present 35 PDC are functioning in the state of HP, one each in the 12 districts of the state and 23 in other towns) Under the TPDS the state governments must lift grains from the PDCs of the FCI and transport it to wholesale godowns for further distribution to the FPS according to their requirement.

The entire chain leaves myriad possibilities of diversion of foodgrains meant for the PDS into private hands, or acceptance of bribes by officials of the PDS from private traders and producers for their ends and similar contraventions that have riddled our PDS with big loopholes.

It is here that the legal aspect of the PDS comes into picture of the PDS²⁷ the legal framework of the PDS is made by the ECA, 1955, its amendments, the PBMA and the hundreds of Orders passed by the Centre and different state governments through the ECA from time to time to ensure smooth and effective functioning of the PDS²⁸

26. *Ibid.*, p. 2.

27. Jai Prakash, Essential Commodities Act, 1955, 3rd ed., p.1. Also see Appendices-I and II at the end of the article.

28. Jai Prakash, Essential Commodities Act, 1955.

In fact these Acts and orders issued there under render an air of “Rule of law” to the actions of different Centre and state agencies controlling our PDS. They lay down what acts or abstentions would amount to offences under these Acts and their punishment etc. A brief perusal of the provisions of the ECA along with case studies is a must to understand how effective they are in containing those that abuse our PDS.

The Essential Commodities Act, 1955

The Act ensures availability of commodities essential for the common man by empowering the government to regulate by licences, permits or otherwise the production, transport, storage, disposal or acquisition of any essential commodity coupled with price regulation through a large number of Central and State Control Orders which form the backbone of this legislation.²⁹ Alongside central control there is provision for regional control through delegation of powers to the State Government or state officers at the spot for expedient action and better appreciation of regional or local problems.

A study of cases decided under the Act reveal the ease and impunity with which these control orders are violated for personal gain and the difficult task of containing the violations given the country’s huge geographical area and our natural penchant for cheating.

Regulating Storage and Stock Limits by Issuance of Licences or Orders

Regulation of stock limits of foodgrains and sugar is carried out by different states of India by issuing licenses to food grain dealers under various Orders passed under the ECA 1955. The very purpose of the Act and the order passed there under would be defeated if condition of the Licence is held to mean that dealers in foodgrains can store them for considerable lengths of time at places undeclared and hence beyond official supervision and thus keep them back from consumers. Form “D” of the U.P. Foodgrains Dealers Licensing Order, 1964 prohibits storage of foodgrains by a dealer at places other than the godowns disclosed in the Licence. Thus the applicant was rightly found guilty of having committed breach of condition no. 2(b) of the Licence in so far as he has stored them for sale at places not mentioned in the Licence.³⁰

To keep more property in possession than that prescribed by an order made under Section 3 of the Essential Commodities Act, 1955, is an offence

29. P. Leela Krishnan, *Consumer Protection and Legal Control*, 1984, p.2.

30. *Ramesh Chand v. State* 1974 All.Cr. C. 310.

punishable under Section 7 of the said Act.³¹

In another case contraband rice which had been seized by the Police, belonged to the Fair Price Shop of G. As such the rice should have been sold and stored at that FPS. The rice, as a matter of fact, was seized while it was being negotiated for sale in the market. It was held that its sale at a place other than the Fair Price Shop was a clear contravention of the provisions of U.P. Grain Dealers Licensing and Restriction in Hoarding Order, 1976.³²

From the above cases we can infer that imposing limits upon stocks helps contain hoarding and black marketing of essential commodities. They vary according to the severity of supply shortfalls and price rises. The State wise position relating to stock limits is given in Appendix-II.

Similarly under Section 3 of the Act various orders with respect to Restrictions on movement of foodgrains have been made by the central and state governments from time to time. These Orders/Notifications restrict movement of goods from surplus States to deficit States. See Appendix-I

Regulating by Issue of Transport Licences and Movement Control Orders

Under the Inter-zonal wheat and wheat products (Movement control) order (1964), it was held that the offense of attempting to export wheat to another zone was complete when the accused were arrested at a place very close to inter-state boundary.³³ Transport of wheat outside State without Licence and without selling it to State Government or Food Corporation of India as required by U.P. Wheat (Levy) Order, 1982 is violative of Section 3 of the Act.³⁴

Prosecution for Offence under Haryana Coarse Grains (Export Control) Order, 1972

Under Clause 3 of the above Order; not only the actual taking of Bajra from out of Haryana State to a place outside but also attempting or abetting such export is an offence. From the evidence of prosecution witnesses, it was clear that the tonga³⁵ in which the petitioner was carrying Bajra was stopped by the authorities at a distance of about two paces from Haryana Delhi border. Therefore, the petitioner was rightly convicted under

31. *Garsi Lal v. State of Bihar* 1967 Cr LJ 1439 (Pat.).

32. *Balram Lal Srivastava v.State of U.P.*, 1982 Excise of Food Adulteration Reports, 112 (All).

33. 1971 Cr.L.J. 1804.

34. 1985 EFR 515.

35. Horse driven cart.

Section 7 of the Essential Commodities Act, for contravention of the Order.³⁶

The District Supply Officer, Ramanathapuram at Madurai organised a night patrol, at Kannirajapuram, during the night between July 6 and July 7, 1976 and was watching the movement of vehicles along the border of the district, when the lorry belonging to the petitioner was seen at about 3:30 A.M. proceeding towards Tirunelveli district. The lorry was intercepted near the border of Ramanathapuram district and the driver was interrogated and the lorry was searched, sixty-five bags of rice and 30 bags of paddy were found in the lorry. The district Supply Officer came to the conclusion that there was an attempt at transporting the paddy and rice to Tuticorin in Tirunelveli district in contravention of the provisions of Clause 4(1) of the Tamil Nadu Paddy and Rice (Movement Control) Order, 1970. Therefore, he seized the lorry with the rice and paddy. The collector upheld this seizure and ordered that the seized lorry and rice bags be confiscated to the Government under Section 6-B of the Act.³⁷

From these cases we see how government's authorities restrict inter state movement through notified orders. Largely State implemented and enforced to help implement the orders issued as per the ECA, they come down harshly on the farmers and traders trying to sell their produce in the form of harassment by the local authorities.³⁸

A common practice followed by the local officials at state borders is, to stop and check trucks carrying goods. Though on the excuse of a routine check, trucks normally get held up for days on end yet the results in unnecessary harassment and imposes a heavy price on private traders, in the form of lost time and the bribes paid.³⁹ Traders reportedly operate at high margins and share a part of these with the inspectors.

Regulation by Distribution Orders through Fair Price Shops and Co-Operatives

Appointment of retailers and authorisation of Government Fair Price Shops, Sahkari Bazaars and Co-operative Stores etc. are achieved by the Government through Licences and orders issued under Section 3 of the Essential Commodities Act.

36. *Balbir Singh v. State of Haryana* 1979 Chg. LR 272.

37. *V. Natarajan v. The Govt. of Tamil Nadu* AIR 1978 Mad. 390.

38. Parking Space for the Poor: Restrictions Imposed on Marketing & Movement of Agricultural Goods in India by Mayank Wadhwa <http://www.ccsindia.org/ccsindia/policy/live/studies/wp0009.pdf> p.2 (viewed June, 2010).

39. *Ibid*, p. 4.

Fair Price Shops are state government shops allotted after issue of a license to sell subsidized foodgrains.

It is necessary that wide publicity should be given to notices inviting applications under Section 3(5) for the allotment of Fair Price Shops and merely pasting of notice inviting applications only in the building of the Municipal Council cannot be sufficient to serve the purpose as only few people would come to know of such notice.⁴⁰

These shops are usually one room tenements wherein the license holding shopkeeper keeps gunny bags of subsidized items for sale to the ration card holders. He has to display the rate list of each item and has to keep his shop open till stocks last. He must also sell foodgrains to anyone holding a ration card.

Regulating by Inspection of Accounts and Display of Price Lists

Apart from the power to regulate by licences and permits, the production, storage, transport, and distribution of essential commodities, Section 3 also empowers the government to inspect books and accounts of traders in essential commodities.

The Essential Commodities Act: An Assessment

The Act works on Central Control Orders and notifications which are followed by State Orders thereby authorizing state officers of a reasonably high rank like the District Collector or the Sub-Divisional Magistrate or the Deputy Commissioner of Civil Supplies or District Revenue Officer to supervise the carrying out of such orders. These officers have powers to release quotas of various essential commodities or to appoint licensed vendors or Fair Price Shops or Co-operative Societies or to fix or control prices etc. They are assisted by various junior officers in other civil departments of the State like tehsildars, patwaris, Food and Supply Inspectors, Industry inspectors, ISI⁴¹ authorities as well as police officers for checking contravention of such orders. So many different Control Orders under which substantial powers are given to different authorities of different departments as well as private agencies, result in an equally large scope of contravention of such orders at various points.⁴²

A study of cases decided under the Act reveal the ease and impunity with which these control orders are violated for personal gain and the difficult

40. (1989) 1 Goa LT 283.

41. Indian Standards Institute.

42. Economic & Political Weekly, Apr. 6, 1986 "An Experiment in Foodgrains Procurement Producer levy in Andhra" by K.V. Natarajan, p. 101.

task of containing the violations given the country's huge geographical area and our natural penchant for cheating.

The Digests of High Court Cases over the year on this Act show that the Act and its control orders are not as frequently challenged by aggrieved parties as compared to other pieces of legislation even though the Act affects a much larger section of the population, much more than any other piece of law.⁴³

This shows that our manufacturers, millers and growers understand the language of being hand in glove with our bureaucrats for their personal gain. The low incidence of such orders being challenged on ground of partiality or discriminatory allotments speaks for itself it is also clear that this Act is barely successful in plugging the leakages in our PDS.

Besides the effectiveness of this Act can also be gauged from the following data:

The results of enforcement of the Essential Commodities Act, 1955 in the States/UTs during the year 2004 as reported up to 31.12.2004⁴⁴ are as under:-

i) No. of raids conducted	:	83848
ii) No. of persons arrested	:	2401
iii) No. of persons prosecuted	:	1171
iv) No. of persons convicted	:	109 (8%)
v) Value of goods confiscated	:	Rs.1704.01 lakhs

For the three years 2006-2008, state and union territory governments prosecuted 14,541 persons under the provisions of EC Act, 1955 and secured conviction in 2,310 cases. In 2009 as on 31 August 2533 persons had been prosecuted and 37 convicted.⁴⁵

Under the Essential Commodities (Special Provisions) Act 1981, against 80,927 raids only 2,719 persons were convicted (3.36%) in 1995, and 45,500 raids resulted in 2,177 convictions (4.78%) 4. during the year 1996.

From an assessment of prosecutions and convictions under the ECA 1955, it is clear that these Acts are barely successful in plugging the leakages in our PDS. Those who divert supplies big time from the PDS lie

43. *Supra n.* 12. p. 294.

44. Ministry of Consumer Affairs, Food & Public Distribution Government of India.mht.

45. ET classroom: Essential commodities act 15 Jan 2010, 0435 hrs IST,ET Bureau.

much beyond the reach of these two measures.

The Planning Commission Report on Our PDS

According to the Planning Commission Report on our PDS,⁴⁶ complaints of large scale diversions of foodgrains and sugar mar the new TPDS (1997).

At the national level, it was found, there was a diversion of 36% of wheat supplies, 31% of rice and 23% sugar. Diversion is more in Northern, Eastern and North Eastern regions; it is comparatively less in Southern and Western regions.⁴⁷

A study in Bihar has reported the following:

Delivery System for PDS in Bihar

- Dealership and even membership of vigilance committees set on the PDS are seen as positions where money can be made
- The procedure to appoint them is highly politicised, and mostly clients of MLAs are appointed
- Sub-district infrastructure to handle food grains is poor; Ranchi had only 11 godowns for 20 blocks
- The Civil Supplies Corporation has no working capital to buy from Food Corporation of India; vans are in poor condition or have no money for petrol, staff does not receive salaries for months
- On the whole, only Government staff, agents and retailers benefit from the scheme

Problems of lack of infrastructure and shortage of funds with Government

Agencies are not unique to Bihar; most States especially in the NE suffer such handicaps except for a few in the West and the South. One study claimed that each fair price dealer has to “maintain” on an average nine government functionaries. Other problems associated with the scheme are:

- The poor do not have cash to buy 20 kg at a time, and often they are not permitted to buy in installments.
- Weak monitoring, lack of transparency and inadequate accountability of officials implementing the scheme

46. <http://www.planningcommission.nic.in/plans/mta/mta-9702/mta-chapter8.pdf> (viewed July, 2010).

47. This study was conducted by the Tata Economic Consultancy Services.

- Price charged exceeds the official price by 10% to 14%.⁴⁸

Conclusion

In the wake of this doctrinaire study on the loopholes in our PDS in this essay the most meaningful suggestion of reform comes from Sh. NC Saxena *chairperson of the ministry of rural development's committee on BPL (below poverty line) surveys*, in an interview given to the Times of India on Friday, April 16, 2010, reproduced here below:

What is the biggest drawback of the proposed National Food Security Act?

The Act is to be enforced through the public distribution system (PDS) which is notorious for its leakages and flaws. The Planning Commission report says that 60 per cent of ration cards/BPL cards are with the non-poor. Only 36 per cent of the poor have any card. And about 20 per cent have no cards at all, and this must be the poorest, which have been left out altogether.

How has the PDS worked well in Chhattisgarh?

In Chhattisgarh, the CM himself had a meeting with MLAs and told them not to make money out of PDS if they wanted to win elections. He replaced all private dealers with panchayats. The panchayats were given an advance of Rs 90,000 to ensure they had enough funds. Almost 500 people were put behind bars for blackmarketing and other similar crimes. A toll-free number and call centres were set up to take complaints on PDS and calls were monitored to ensure that action was taken. The state government recruited 500 motorbike riders to go out and check if foodgrains have reached the people.⁴⁹

Suggestions

Complaints instituted by the public generally relate to mismanagement and corruption of persons officiating in the State Civil Supplies Departments, FPS owners etc. Mismanagement and curt behaviour of persons in charge of these agencies do not receive serious attention for the reason that persons responsible for the outrage have contacts in the higher echelons of administration. There is almost complete unanimity that essential commodities supplied through these agencies are not of desired quality. It

48. *Supra* n.45.

49. N C Saxena, is one of the food commissioners appointed by the Supreme Court to monitor the implementation of orders related to the right to food. Saxena, a member of the previous National Advisory Council, spoke to Rema Nagarajan on the proposed National Food Security Act (NFSA).

is suggested that the panchayati institutions and consumer associations must actively involve themselves with the public distribution programme to make it a success.⁵⁰

It is also suggested that the Government must open up fairer price shops and supply all essential commodities. It must also supply sufficient quantity. Efficient supervision by the superior officers can alone make the working of these fair price shops a success.⁵¹

Gram Panchayats and Gram Sabhas must identify the ultra poor in the villages with no land, livestock or assets to make them immediate beneficiaries of State action for tackling hunger. Also the pradhans of these bodies must be made responsible to give information to the rural poor about the place of implementation of Centrally Sponsored Schemes like the location of the FPS of that area or the address of the school where the Mid day Meal Scheme is working etc. The UP government has proposed that important information like the arrival of PDS supplies at the local FPS would be SMSed to the Pradhans and the ration card holder's mobile number so that people can avail of the subsidised food. This is after the jolt it received from the UP grain scam of December 7, 2010.⁵²

It is not enough merely to make the allocations to the PDS by accommodating the requirements of grains and sugar of different States. The Food Secretary himself should follow it up by monitoring in weekly meetings with the FCI and the Railways at high enough levels the progress in the movement and delivery of the quantities allocated.

The Centre should ensure adequate infrastructural capacities in districts and at block levels to plug leakage of scarce resources which reportedly helps only contractors and corrupt government staff and keeps the poor and the needy away.

Very often, difficulties are created for the States by the Food Ministry acting on his own without keeping the States in the picture. Delays and cuts in the allocations for PDS can bring the situation in the affected States to near crisis. Once the even tenor of allocations, transportation and supply at the doorstep of fair price shops is disturbed by the Centre's dilatory or thoughtless actions, it takes a long time for the States to get back to the normal rhythm.⁵³

50. D.N. Saraf, *Law of Consumer Protection in India*, 1990, p. 357.

51. *Supra n.12*, p.182.

52. *Times of India*, New Delhi, December 8, 2010. Tuesday, February 9, 2010.

53. *Food inflation : Onus wholly on Centre*, THE HINDU, Tuesday, February 9, 2010.

Food inflation : Onus wholly on Centre, THE HINDU,

Another suggested reform is that the PDS must focus on: locally bought grain, ensure PDS documents be made public and provided on demand within seven days, at costs prescribed by the Right to Information Act (RTI); Fair Price Shops management must be given to the village councils and women's groups⁵⁴ etc. instead of patrons of local politicians.

54. Govt.tack on food bill bySamar Halarnkar, Hindustan Times,New Delhi, April7, 2010.

Appendix - I

State-wise position on restrictions imposed by State Governments/ Union Territories on movement of food and agricultural produce State Status

A.P Paddy (Restriction on movement), 1987: According to this order no person shall attempt to move or abet the movement of paddy from any place in the state to any place outside the state except under a permit issued by the State government or an authorised officer. The order gives the implementing authority the power to enter, search and seize. *M.P Rice Procurement (Levy) Order, 1970:* It imposes restriction for rice milled in the state, by forcing the millers to give a prescribed percentage of their production in levy to the State government. For the remaining quantity they have to obtain release order and transit permit from the concerned district collector for movement to other districts or states.

Orissa Restriction on movement of rice and paddy from one district to another within the state. The producers/cultivators can move their surplus stocks of paddy outside the state with permission of concerned sub-collectors.

Tamil Nadu Restriction imposed on of paddy/rice out of the state, which is conditional to 100% levy.

U.P Rice and Paddy (Levy & Regulation on trade) Order, 1985: This applies to the whole of U.P, including the border areas. As per this Order, every licensed miller shall sell and deliver to the government, at the notified price, 60% of each variety of rice. The movement or sale of rice can be done only after obtaining a release certificate from the Centre In-charge/Senior Marketing Inspector/Marketing Inspector (after having to sold to the State government as per the levy).

Pondicherry Paddy and Rice Procurement (Levy) Order, 1996: According to this, every trader who wishes to transport paddy/rice outside the state shall have to obtain a permit and measure transport levy at 20% of the quantity transported. The traders are also to pay 10% as purchase levy to the government.

Appendix - II

State-wise position on restrictions imposed by State Governments/ Union Territories on storage of food and agricultural produce State Status

A.P Rice & Paddy (Storage Control) Order, 1981: It imposes restrictions on stock limits of rice and paddy.

Assam Stocking of food and agricultural produce is regulated through: *Assam Trade Articles (Licensing and Control) Order, 1982; Assam Public Distribution of Articles Order, 1982 and Assam Rice and Paddy Procurement Order, 1955.*

H.P Trade Articles (Licensing and Control) Order, 1981: Traders possessing foodgrains and other food articles more than the specified limits are required to obtain a license.

M.P Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991: Under which Stock limits imposed on wheat for flourmills.

Meghalaya Foodgrain (Rice) Licensing and Control Order, 1985; Meghalaya Pulses, Edible Oil seeds and Edible Oils (Licensing and Control Order), 1979 and Meghalaya Sugar Dealers Licensing Order, 1973 have been issued to regulate purchase, storage and sale of essential commodities.

Orissa Rice and Paddy Control Order 1965: It authorises the State Government to issue any direction to a license with regard to purchase, sale or storage for sale in wholesale quantity of rice and paddy.

Orissa Wheat and Wheat Products Control Order, 1988: It authorises the State Government to fix up the maximum limit of storage of wheat or wheat products or both taken together on wholesaler or producer.

Punjab Trade Articles (Licensing and Control) Order, 1992: A license has to be obtained by the dealers before carrying on business in the commodities specified in the Schedule-III of the Order. Stocking of more than specified limit of wheat, paddy and its products requires a license.

Sikkim Rice and Wheat (Storage) Control Order, 1992: Stock limits imposed on rice and wheat.

Tamil Nadu Essential Trade Articles (Regulation of Trade) Order, 1984: Stock limits fixed paddy/rice, sugar and pulses *Chandigarh Food Articles (Licensing and Control) Order:* Stock limits imposed for wheat, rice and pulses.

Pondicherry Essential Trade Articles (Regulation of Trade) Order 1989: Stock limits fixed on rice.