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The Political Economy of the
Essential Commodities Act

by
Jos E Mooij

DPP Working Paper No 29

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Development Policy and Practice Research Group
Faculty of Technology
The Open University

January 1995

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FOOD, LAW AND POLITICS IN INDIA

The Political Economy of the Essential Commodities Act

1 Introduction

If there is one issue prominent these days in (political) economy and economic policy, it is the relation between state and market. Liberal neo-classical economists such as the Nobel prize winner James Buchanan or Deepak Lal have certainly succeeded in taking the lead in this debate. Their ideas on liberalisation and deregulation have influenced economic policy in many countries now, although there are also influential critiques and counter positions (eg Cornia et al, 1987; Drèze and Sen, 1989). A general problem with many of the contributions to the debate is the dichotomy drawn between the state and the market which are conceptualised as separate social phenomena that develop independently, obstructing each other's development rather than mutually reinforcing it. The debate is highly influenced by ideological notions. Assumptions about the freedom of the market or the rational character of state regulation take the place of detailed empirical analysis about the actual interconnectedness and interrelations between the state and the market (Gould and von Oppen, 1994).

An additional difficulty in the debate is related to conceptual lack of clarity. Mackintosh (1990:46-47) distinguishes between three different meanings of the concept of 'market'. The first meaning is the broadest abstraction, 'the market', usually referred to in singular. It is an ideological notion about independent actors (people or institutions) that exchange goods, services, labour power and money. The second meaning of 'markets' is *"somewhat less vague, if still abstract: it refers to the wide range of abstract 'models' of different types of markets, constructed by economists for the purpose of debate"* (ibid:46). The third meaning of 'markets' refers to a number of different ways of buying and selling. According to Mackintosh (ibid:47) *"markets in this sense of the term have widely varying institutions and economic contexts, they operate on limited information, they involve and help to create a variety of social classes, power relations, and complex patterns of needs and responses"*. Mackintosh refers to these markets as *real* markets, as they generate real effects in terms of people's survival. A similar conceptual point can also be made with regard to the state. This term is also used in several ways. Firstly, there is a very abstract notion of 'the state' (eg in the discussion about 'the nature of the state'). The second meaning is slightly less abstract; it refers to the idealised notion of policies and state institutions. In much public administration literature these state policies and institutions are described in terms of their function, official objectives and activities. A third way of approaching the state is by looking at 'policy as process' (Mackintosh,



people die in India over and above the 'normal mortality' due to causes related to endemic hunger and deprivation.

In the course of the years, the Indian government has adopted several laws and policies to deal with these problems of poverty and unequal food distribution. There are several laws laying down proper trade procedures, all intended to increase access to food, to stabilise food prices and/or to protect the consumer against the profit-making mentality of food traders.³ Furthermore, the Government of India has established several food distribution programmes, the most important of which is the Public Food Distribution System, a large-scale food rationing programme that covers, in principle almost the entire population. In addition, there are other, sometimes more localised and targeted efforts, such as food for work programmes and noon-meal schemes for schoolchildren.

This paper focuses on one of these government laws, namely the Essential Commodities (EC) Act. The purpose of this Act, according to its 1955 preamble, is to provide for controls of production, distribution of and trade in certain commodities in the interest of the general public. Today, anno 1994, these 'certain commodities' include foodgrains, sugar, edible oil, pulses and also other products such as cement, petrol and petroleum products. The Act is, in fact, an attempt to influence the market in these commodities. It prescribes how trade should take place, how traders should behave and which procedures should be followed in cases of blackmarketeering or speculation. In short, it is an instrument with which the government attempts to control the market by enforcing certain rules of behaviour on traders.

The EC Act was enacted in a period in which there was a widespread belief in the plannability of society. This law is only one of the many pieces of legislation formulated in the first decades after Independence that aim to contribute to the construction of a fairer, more equal society.

2 Law formulation: The EC Act as an Instrument to Control Traders

A Very Stringent Piece of Legislation

The printed version of the EC Act is only a few pages in length. There are, however, a large number of government orders issued under the Act. Section 3 stipulates that if the government is:

3 For instance, the Essential Commodities Act of 1955, the Consumer Protection Act of 1986, the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act of 1980 and state-wise Market Regulation Acts.

of the 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 (...), it may, by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

The EC Act comes under the concurrent list, which implies that both Central and state governments can formulate orders under section 3. In 1992 there were more than 70 central control orders related to different commodities. Most states also have enacted several dozen control orders. There is a growing consensus among traders, lawyers and government officials that legislation regarding trade and distribution of essential commodities has not only become vast, but also confusing and unimplementable, even when all the parties cooperate. Legislation is confusing because orders frequently change. In many states there is a great deal of litigation concerning (parts of) the various orders, and orders or clauses are sometimes reformulated after the state High Court has nullified the previous order. The argument that the law and its orders are unimplementable refers to the detailed procedures laid down in some orders (for example, how books and accounts should be kept).

Furthermore, the Act is a double-edged piece of legislation. Once a contravention is suspected there are two possible procedures. The first is a civil procedure, described under sections 6A to 6C of the Act. These sections provide for confiscation of the essential commodities with respect to which the owner/trader is alleged to have committed an offence. The power to confiscate rests with the District Collector, the highest official at the district level. The second procedure is prosecution for a criminal offence, whereby the enforcing officials may file a charge-sheet in court and launch a criminal case against the traders. Thus, for the same offence, a trader may be involved in both a civil case in the District Collector's office and a criminal case in a judicial court.⁴

Another important characteristic of the law is related to the burden of proof. Section 14 of the Act specifies that whenever a person is prosecuted for contravening any

4 The law itself does not prescribe under which conditions only a civil or both procedures should be followed. The most logical view, and the one most in accordance with the spirit of the law, is either none or both. If there is no suspected offence, neither prosecution nor confiscation of the goods is necessary, while in cases where a contravention is suspected, prosecution should follow. Because prosecution can only take place if there are commodities involved, there should be a confiscation case as well. In reality, however, things are somewhat different. Since the Essential Commodities Act came into force, the state governments booked innumerable cases against erring traders and confiscated their goods (civil cases), while the number of prosecutions is much less by comparison. Two reasons may explain this. In the first place traders try to prevent prosecution; they bribe or otherwise convince the officials not to start criminal cases. Secondly, section 6C(2) of the EC Act prescribes that the value of the property confiscated from the offender should be restored to the trader after acquittal by the criminal court (see Koteswararao, 1986). As most EC cases do indeed end in acquittal, as I will show later, confiscation without prosecution is often a safer way to punish a trader than to follow both procedures.

order issued under this Act, the burden of proof that he behaved according to the law lies on him, that is on the accused. This characteristic is certainly not a common feature of Indian law: usually the burden of proof rests with the prosecution (see chapter VII of the Indian Evidence Act).⁵

Since 1955 various amendments have resulted in the Act becoming more strict. The 1967 amendment increased both the minimum and maximum punishment. The 1971 amendment further authorised the seizure of coverings, vehicles and animals used for the transport of offending goods. The 1974 amendment made EC crimes non-bailable, which means that only judicial courts are authorised to grant bail (and no longer the police or other officials). The 1981 amendment once again made it more difficult to obtain bail and introduced a mandatory minimum imprisonment of three months.⁶ This amendment also changed the procedure to appeal against confiscation of commodities - from an appeal to the judiciary to an appeal to the government - and it also established special courts to deal with EC cases.

History and Discussion

When in 1955 the Essential Commodities Bill was discussed in the Lok Sabha, (Parliament), not all its members were in favour. It was argued that experiences with controls during the second world war and afterwards were insufficient as the following quotes from some MPs make clear:

I hope that this new Bill does not repeat the same old blunders (...). [T]he bitter experience with the previous Act created a doubt that also this Act may cause similar problems once again. I hope you will not disagree with me about the distortions of our morality and morbidity that occurred because of the previous Act. (Lok Sabha Debate, 5.3 1955; 1293)

[T]he moment you want to make any particular goods go out of public view in the market, you must bring them under control. If you bring them under control, the goods or materials suddenly disappear. (LSD 5.3 1955; 1302)

I oppose the Bill tooth and nail (...). We have just got rid of controls and the country is feeling very much relieved after the control is taken away. Today things are cheaper and the poor man can live. (...) If this Bill is passed, it

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- 5 In fact, in EC cases the primary burden of proof also lies with the public prosecutor. For instance, the public prosecution has to assert that there was excess stock. Only then does the burden of proof shift to the accused, who has to show either that this was lawful, or that this fact cannot be asserted beyond reasonable doubt. Compared to most (but certainly not all) other pieces of law in India, in EC cases the burden of proof shifts easily from the prosecution to the accused.
- 6 But strangely enough this amendment reduced the maximum imprisonment. Section 7(1)(A)(ii) and subsections (2) and (2A) of section 7 prescribe a maximum imprisonment of seven years. In 1981, however, the newly inserted section 12A prescribes that all EC cases should be dealt with in a special court; section 12AA(1)(f) says that all offences should be tried in a summary way and that a special court cannot pass a sentence of imprisonment exceeding two years as far as summary trials are concerned. In effect, the high maximum sentence of imprisonment mentioned in section 7 amounts to an empty threat (see Koteswararao, 1986 and Sengupta, 1984).

would do a great injustice to the poor classes and the national income as a whole. (LSD 21.3.1955; 2783/4)

Still, there was no serious attempt to cancel the whole Bill and to withdraw controls on trade and distribution altogether. Most of the discussion did not concern approval or disapproval of the Bill, but the specific features of the law itself. Advocates of the Bill tried to convince the more sceptical MPs that "*after all, (...) these are legislations that are rarely used*", or "*after all, the provisions in this Bill will come into force when there are conditions of emergency (...)*" (LSD, 21.3.1955; 2817).

A large part of the discussion focused on the question of whether it is legitimate to make the EC Act stricter than others. The proposed Bill, which passed the Lok Sabha in 1955 without amendments, has certain provisions that are rare in Indian law generally.⁷ Some MPs did not agree with this situation, arguing that usual norms of equity and jurisprudence should apply to people accused of EC crimes. Others argued that EC crimes should be dealt with in a more rigorous fashion, because theft of this kind not only robs an individual but the whole society of essential goods. The following quotation of an MP further highlights this controversy:

What is it that we want? Do we want a strict enforcement of the control orders so that the distribution of controlled commodities may be equitable and in accordance with the law, or do you want to allow a certain amount of laxity in the administration? Do you want to allow, by a theoretical adherence to the principle of jurisprudence, a practical injustice to be committed on the society? That is the fundamental question that has got to be answered. (LSD 21.3.1955; 2780)

Although this last argument is mainly rhetorical, it has been successful, not only in 1955 but also in all subsequent amendment discussions. The advocates of a stricter law have always succeeded in reducing the discussion to two opposing viewpoints: one against hoarding and blackmarketeering, and therefore in favour of various exceptional strict measures; the other, against these measures and in favour of a loose law, a lax administration, blackmarketeering and inflation.

From the beginning the EC Act was regarded as an instrument of punishment which thereby causes a deterrent effect. Traders are regarded as potential criminals, as people who can never be trusted and whose activities should be restricted in order to prevent much worse. The EC Act is clearly meant as a weapon in the fight against these "*hoarders [and] marketeers who are playing hell with the lives of millions of people*", "*these maneaters [who] are too cunning and always escape through the lacunae in the*

⁷ Among other things these are related to the already mentioned burden of proof, the fact that 'neglect' is sufficient reason for conviction, and the punishability of an attempt or abbetment to contravene the law.

law".⁸ The most controversial parts of the original law and most amendments are justified on the basis of this argument: hoarding and blackmarketing are anti-social and anti-national activities in which many traders indulge, certainly in the absence of controls and sufficient punishment. The government should be armed with a tough instrument to deal with these problems.

This instrumentalist position with regard to traders goes together with legalistic assumptions as far as the bureaucracy, the enforcing officials, are concerned. Although in all Lok Sabha discussions of the EC Act some have expressed their doubts about misuse of the law by officials, its advocates have always been able to convince the others that "*after all the officers and men and State governments have some common sense*" (LSD, 21.3.1955; 2825) or that "*extreme care will be taken to see that these powers are not misused*" (LSD 26.8.1976; 265). Over the years the doubts expressed in the Lok Sabha over the usefulness of strict legislation in the absence of sufficient political and bureaucratic will power to enforce these measures has grown. But at the same time amendments have not only increased the force of the law as an instrument in the hands of enforcing officials, they have also effectively reduced the possibility of questioning the actions of these officials. The 1976 amendment removed the possibility of appeal against search and seizure. The 1981 amendment meant that appeal against confiscation of commodities was taken away from the judiciary and given to the state government (ie top bureaucrats).

As could be expected, traders in essential commodities have been very much opposed to the EC Act and its various amendments and since 1981 their protests have focused on the 1981 EC (Special Provisions) Act in particular. Of all amendments to the original Act, this was the most far reaching. First implemented in 1982 for a period of 5 years, it was extended in 1987 and again in 1992. The traders deemed the law to be:

not only unconstitutional, arbitrary and against all canons of Justice. It has done nothing except to encourage corruption in large scale and bringing the E.C. dealers to the level of second class citizens (...). (Text of postcards printed as part of the traders' protests in 1992).

In 1987, and especially in 1992, traders organised agitations and manifestations. Some went on hunger strike, closed their shops in protest, and sent many petitions and memoranda to the state and central governments. They attempted to convince members of Parliament and the minister concerned of the merits of their case, but all with limited success. In August 1992 it was decided to extend the EC Special Provisions Act by another 5 years.

8 From the preamble to the 1974 Amendment.

Although the law is meant to guarantee provision of essential commodities to the general public (preamble to the 1955 law), and although politicians always implicitly refer to consumers' interests (each anti-trader argument and each reference to high prices can be taken as a pro-consumer argument), consumers themselves are conspicuously absent in the law and the debate surrounding it. The consumer movement is not involved in any discussion concerning the Act,⁹ and consumers also do not figure in the law itself. There is no provision for them to claim equitable distribution, fair prices, sufficient production or any such thing for which the law is supposed to provide controls. The whole overt struggle is between the government and the traders, and from that we can conclude that as far as law formulation is concerned, the government has won with flying colours.

3 Trade and Law Enforcement: Regulation, Bribes and Social Networks

We now shift from the process of law formulation to the process of law implementation. As said above, there are dozens of orders issued under the Essential Commodities Act, both by the Central and by the state governments. This means that traders in different commodities or traders in different states are faced with different control orders. In this section I will describe three cases which serve to illustrate how traders and enforcing officials deal with the law. These cases are based on fieldwork in Akkipura, a rice producing area in South India. In the course of my fieldwork I collected many similar stories. I selected these three because they direct our attention to some general points. This is not to claim that the cases are representative, although the mechanisms illustrated have a wider relevance than these three cases only (see Sayer, 1984 about representativity versus the search for mechanisms). In the next section I will come back to the extent to which the cases point at more general phenomena. An issue not dealt with systematically in this paper is the differentiation within the group of traders described here. For this, I refer to Mooij (1995).

The traders in the following cases are all paddy and rice wholesalers.¹⁰ In Akkipura it is especially this category of traders that has to deal with the Essential Commodities Act. Some of these paddy and rice wholesalers are rice mill owners as well, which means that they are all wealthy and influential traders. The value of the land, building

9 In fact, there is no nationally organised consumer movement. Within the various states, there are consumer organisations and consumer redressal fora. The latter are governmental organisations "with a difference", where consumers can complain about the housing board, electricity supply, telephone bills etc. The interest of these organisations in foodgrain prices is limited.

10 Before it is processed rice is known as paddy, which first needs to be dried, dehusked and hulled before it can be consumed as rice. In Akkipura virtually all paddy processing is done in modern industrial rice mills.

and machinery of a modern rice mill is about Rs 1.5-15 million¹¹ and the investment in rice and in paddy required to run a rice mill is high. Rice mill owners cum traders are influential traders because they are located very strategically in the food chain: relatively few rice mill owners take a position in between a large number of paddy producers, a large number of rice retail dealers, and an even larger number of rice consumers. Apart from this, many rice mill owners are well connected in political circles, are big property owners and/or belong to the dominant caste. The orders most relevant to them are the Essential Commodities (Maintenance of Accounts, Display of Prices and Stocks) Order, the Essential Commodities Licencing Order and the Rice Procurement (Levy) Order.¹²

The *first case* concerns a paddy/rice trader and mill owner by the name of Anand who became involved in a criminal case. He won the case, but he lost his mill. The story of his case is based on interviews with Anand himself, with his brother and with the public prosecutor, and on the study of court documents.

In 1984 Anand's mill was seized by the food vigilance squad. In his own words:

I was not at home when the vigilance squad people came. That is why they seized the mill. This vigilance squad comes twice a year to collect money (ie bribes). To satisfy their superiors they have to carry out one or two seizures as well. Naturally they select mills where the mill owner is not there to pay the money. If I was there I would have paid them.

After seizure, the vigilance squad handed the case over to the local police. Some days later at 11pm, a local police inspector made a phone call to Anand informing him that the government lorries would arrive that night to move the seized commodities and to arrest Anand. However, the inspector said that a bribe would allow Anand to flee to the state capital. After some discussion and negotiation, a settlement was reached for 25,000 rupees. While Anand was still handling this telephone call, the police constables rang his doorbell to collect the money. Anand paid, and in the same night he fled to the state capital where he obtained bail. The manager of his rice mill was arrested instead.

11 This is about £30,000-300,000. At the time of fieldwork, Rs. 1 was approximately £0.02.

12 The EC (Maintenance of Accounts, Display of Prices and Stocks) Order prescribes how traders in essential commodities should keep accounts and that they should display a list of prices. The EC Licencing Order lays down the conditions of a licence to deal in essential commodities. The Rice Procurement (Levy) Order prescribes that each trader who converts paddy into rice should pay one third of his produce to the Government. The Government pays a fixed price for this levy rice. This price is usually lower than the open market price. The remaining two thirds of the traders' produce can be sold on the open market. Levy rice is used by the Government for the Public Food Distribution System. An important additional aspect of the Rice Procurement (Levy) Order is that it restricts the free transport of rice.

Eight months after seizure the local police filed a charge-sheet in court, thereby launching a criminal case against Anand. The charge related to an alleged difference between book stock and physical stock: there was an excess of 10 tonnes of paddy, a shortage of 1 ton of rice and an excess of 1 ton of broken rice. Furthermore, it was alleged that Anand had not paid enough levy.

It took more than 7 years to pass the judgement, and in the meantime Anand was called to court 166 times! During these years, several judges came and went, and most of them had started afresh with hearing witnesses. As Anand did not live next door to the court building, and as the scheduled time of the hearings was usually not very clear (and often at the end of the day it was announced that there was no time left to hear the remaining scheduled cases), each court appearance took up the whole day. Travelling back and forth to court cost him a considerable amount of money. Usually the accused traders also pay for a car to transport the prosecution witnesses in order to guarantee that the witnesses will not give evidence against the trader. In 1988 Anand closed his mill and sold his plant. His own explanation was that he could not run the rice mill while he had to go to court so often. His brother, also a foodgrains dealer, gives a more general interpretation:

Anand could not face the officials any longer. As a trader you have to face a lot of threat and harassment. There are always problems with labour, electricity, government policies. Between 1983 and 1987 there was a drought. Still the government insisted on levy payments. They also demanded a lot of bribes. To face the officials, that is the problem. If you are not strong enough, you won't succeed.

In 1991 the judgement was passed and Anand was acquitted, but no compensation was given. The judgement stipulated that the whole court case should never have taken place. The charge-sheet was filed in court 8 months after the arrest took place, while the Code of Criminal Procedure prescribes that further investigation into the offence should cease after 6 months of the date of arrest. At the time, the judge commented:

No application has been filed by the investigating officer for extension of time and the charge sheet has been submitted beyond the 6 months. Hence, even on the ground of not complying with the provision of sub-section 5 of section 67 Cr.P.C. the further proceedings should have been stopped against the accused persons.

The judgement continues that even on the basis of merits the case cannot be won by the prosecution. The most important reason for this is that the seizing officials of the vigilance squad had not carried out any physical stock verification. They had looked at the heap of rice in the mill and assumed that the physical stock differed from the book stock. Furthermore, the point of levy could not be proved.

This case study shows how officials make use of the law to collect bribes from the traders. They succeed in threatening the traders in order that they pay up. Apart from the prospect of financial gain through bribes, they seem to lack interest: a proper stock verification was not undertaken, and the charge-sheet was filed too late. The trader in this particular case was not daring enough to insist that his lawyer finish the case in the shortest possible time, or to seek political assistance, was damaged in such a way that he had to close his business, despite the fact that he was acquitted in the end.

The *second case* concerns a successful trading business. The story is based on several interviews with a ricemill owner named Bhaskar, and an interview with one of the traders in his mill, Chandrappa. Bhaskar's mill was a modern plant with a milling capacity of 2 tonnes of rice per hour. Bhaskar himself was also a trader, along with 15 other traders doing business in this mill. Seven of them were registered traders while the others practised their trade without an EC licence (which is of course illegal). The traders brought paddy to the mill and paid hulling charges to the mill owner.

Bhaskar estimated that yearly, 7,200 tonnes of paddy was milled in his mill, producing about 4,800 tonnes of rice. Of this quantity of rice, 1,300 tonnes represented Bhaskar's own trading business, while the remainder belonged to the other traders, including Chandrappa.

The Rice Procurement (Levy) Order prescribes that each paddy/rice trader should surrender 33.3% of his produce (rice) to the government for the Public Distribution System. The procurement price is fixed by the government and is lower than the open market price. Hence it is no wonder that traders try to avoid levy payment. In 1990-91 Bhaskar gave 100 tonnes of rice as levy in his own name. Of these 100 tonnes, about 40 tonnes came from the unlicensed traders whom Bhaskar had asked to contribute to his levy. The remaining 60 tonnes constituted the levy paid by Bhaskar himself. This means that Bhaskar surrendered about 5% of his produce to the government (60/1300). Similarly, Chandrappa surrendered 100 tonnes in 1990-91, about 10% of his produce.

As Bhaskar surrendered 100 tonnes of rice in his own name, he was allowed to sell 200 tonnes of rice freely in the open market, and because of good levy performance (sic!) Bhaskar gained permission to increase his free market sales to 300 tonnes. The total amount of rice entered in Bhaskar's account books could never exceed 400 tonnes, which was about 30% of his total produce (400/1300). 70% of his business was unaccounted for. In the case of Chandrappa, the percentage of business accounted for was similar.

Business which is not accounted for not only means that no levy is paid, but also that sales-tax and regulated marketing tax (RMC tax) are evaded. Of course, there are costs for the traders as well. After a load of paddy is bought from farmers or intermediaries, the officials at the RMC checkpoints have to be satisfied with some "pocket-money". These checkpoints are located on the main district roads. As Bhaskar himself was not always present when the paddy was transported from the fields to his mill, and as he did not always trust the lorry driver, he gave a slip of paper with his signature to the driver, who later gave this slip to the officials at the checkpoint. After these officials had collected a number of slips, they visited Bhaskar in his rice mill to collect the money. The contacts between Bhaskar and these RMC people seemed rather friendly, as Bhaskar recalled: *"Whenever there is a new official transferred to the RMC checkpoint, he will come to the mill to introduce himself"*.

The rice accounted for can be easily transported and sold in a neighbouring state or district where the prices are higher. The rice that remains unaccounted for, however, is more difficult to transport as it is not covered by proper documentation. Traders like Bhaskar and Chandrappa have several options to solve this problem. They can either sell the unaccounted for rice locally, thereby reducing the chances of being caught by the police, or they can transport the rice to another district and bribe the policemen in the various checkpoints along the way. Bhaskar estimated that the costs involved were about 1000 rupees per lorry-load (10 tonnes). A third possibility is to purchase transport certificates from other traders. Selling and purchasing transport certificates is illegal, but nevertheless a widespread phenomenon. Yet another option is to sell the rice to some large traders who had managed to obtain a stay order from the State High Court, with the result that rice smuggling became much easier. All of these four options were occasionally practised by Bhaskar and Chandrappa, but which they chose depended on the prevailing price of transport certificates, the difference in rice price in their home town and the price elsewhere, their relationship with the policemen at the checkpoints, and so on.

Food inspectors or other law enforcing officials would regularly visit the mill. Usually the miller and traders knew this in advance, and when there was unaccounted for stock in the mill, they immediately entered this stock in one of the traders' names, preferably one who had already surrendered sufficient amounts of levy. Otherwise, according to Chandrappa, they would risk a seizure: *"Once a fortnight they come to collect money. Sometimes, when there is something special, a holiday or celebration, they ask for extra money or 50-100 kg's of rice"*. Bhaskar had not succeeded in avoiding raids and seizures altogether and had been involved in at least one court case.

In 1986 the Food Vigilance Squad came to my mill and declared that there was a stock difference of 160 bags of paddy. At the same time someone else's mill was raided as well. That case is still pending. I paid 4000 rupees to the district judge through my lawyer, 2000 to the lawyer, 2000 to the local police and 10000 to the Vigilance Squad. I was acquitted soon afterwards.

Very recently Bhaskar's mill was raided again because of similar contraventions, but this time it did not result in a court case.

In one of the interviews Bhaskar complained that bribery had become excessive. He estimated that in 1991-1992 his own bribe expenses (for which he kept a separate account) were about 70,000 rupees, which is 30-40% more than in the previous year. This, he argued, was due to the politicians and ministers:

The local tahsildar and food assistant have payed 1-2 lakh¹³ to the minister to be posted in this place, and each department has to make a monthly payment to the chief minister. Naturally they collect where there are some weaknesses.

Of course, we are doing some image building. Towards officials we pretend that we are no longer doing any second business and that we are very happy with that. But in reality second business becomes more and more important, and it is impossible to survive otherwise.

Nevertheless, trader Bhaskar managed quite well. On another occasion he gave this apt formulation of his situation: *"Why should we complain? We pay in ten thousands, but we earn in lakhs"*.

This story illustrates several points. In the first place, traders construct their accounts in such a way that they seem to adhere to the law. They pretend they remain within its framework. Because of this 'good performance' they are even granted permission to increase open market sales. Rice that is not included in the accounts is sold illegally. Traders who are daring enough, or who have a transport certificate exemption order, smuggle rice from one place to another in order to maximise their profits. Secondly, one of the basic requirements to survive in trading business is to establish and maintain good relationships with the officials. Thirdly, the example again illustrates how useful the EC Act is for officials to collect money.

The *third case* relates, once again, the story of a successful paddy/rice trading and milling company. The story is based on an interview with one of the partners in the business, Dinesh, an interview with a former manager and the study of several High Court orders. Dinesh owned a modern rice mill with a production capacity of 3 tonnes

13 A lakh is the Indian term for 100,000 rupees. The tahsildar is the most important official at the sub-district (taluk) level, the food assistant (deputy director of food) is the highest official at the district level responsible for food matters.

of rice per hour. There were no other traders in the mill, nor was there any job-hulling for farmers. This company was a relatively large trading business.

Dinesh estimated that about 20% of the business was accounted for, while 80% was unaccounted for. Like so many traders he tried to defend the situation by arguing that it is impossible to do otherwise:

It all depends on the difference between the open market price and the levy price. Now the difference is 80 rupees per quintal (ie 100 kilo). So we loose 8000 rupees per load levy. Naturally we do more business which is unaccounted for.¹⁴ Last year the levy difference was less.

Dinesh explains that he has to give a large amount of bribes to officials because he is doing so much business which is unaccounted for. *"We can't blame the officials"*, he argued, *"we have to pay them because we are doing second business"*. Generally his trading business succeeded in maintaining good relations with the officials:

For example, when the food assistant is transfered to another place and a new food assistant is coming, the departing FA usually introduces us to the new one. Sometimes we give a party, a farewell and welcome party.

Dinesh also maintains good relations with politicians:

We contribute a lot to party funds. When there are elections we donate 15000 rupees to the ruling party, 8000 to the most important opposition party, 5000 to the third one, and 1000-2000 to independent candidates. We have to give them that much because we are a large trading company. When there are special functions we also give money.

Apart from cultivating these relationships Dinesh's company followed one more strategy to survive: to fight in court. For 10 years they employed a manager whose main task was to challenge legal provisions and trade restrictions in High Court and to obtain stay orders. The company had succeeded in obtaining orders staying several legal restrictions on paddy and rice transport. Other stay orders related to maximum stock quantities allowed to be kept by the trader, the power of the District Collector to lift commodities after a seizure, and arrest and bail provisions.

This case shows once again that networking with officials and politicians is a very important activity in running a trading business. Furthermore, it shows how individual traders succeed individually in removing some of the sharp edges of the Essential Commodities Act and its orders by going to the High Court for orders of exemption from certain clauses of the EC Act.

¹⁴ Less levy automatically means less rice accounted for. The total amount of free-sale rice that is accounted for can never exceed twice the amount of levy given.

4 Rice Trade and the Law: An Interpretation of the Three Cases

What do these various stories illustrate and to what extent are they representative or exceptional? Firstly, the law does not seem to be very effective in restricting the activities it is meant to curtail.¹⁵ The traders in the second and third story were selling a large part of their produce on the black market, which is exactly what the law is designed to prevent. These three traders were not exceptional. Out of the 40 traders interviewed, more than 20 claimed that it is impossible to do business which is fully accounted for. I also interviewed a few people who used to be foodgrain dealers but who had given up their business for just this reason: an honest trader cannot make a profit. Thus, practices which were supposed to be abolished or restricted under the EC Act were still widespread, in any case as far as paddy/rice trade in this particular area was concerned.

Only in a few cases traders are convicted for not complying with the law. The first and second story are not exceptional in this respect, as is shown in Table 1 and 2. Table 1 gives details of the fieldwork area. The table shows that very few cases end in conviction of the accused. The table also shows that it takes some time for most cases to be disposed of. Of the cases initiated in 1986, 10% were still pending in 1992, and less than 10% of the cases begun in 1990 had been disposed of within 2 years. Table 2 confirms these facts at the All India level. It shows that convictions are relatively rare in EC cases as compared to criminal cases generally. The table also shows that the percentage of pending trials is much higher in EC crimes than in crime cases generally. The long duration of many EC crime cases is unexpected, since from 1982, EC cases are tried in special courts which guarantee quick disposal of such cases. This is another example of the law, in this case the 1981 amendment, not achieving the effects it was designed to achieve.¹⁶

15 Strictly speaking this formulation is incorrect. The law itself cannot be effective. It is people that use the law, not the law that regulates people's behaviour. For a critique of law reification, see Balbus, 1977; von Benda-Beckmann, 1989; or Nelken, 1981.

16 According to Table 2, convictions as a percentage of total discharged cases ($2b/(2a+2b+2c)$) amount to about 50% in the case of EC cases (and 90% in criminal cases generally). This is puzzling. It is much higher than I would have expected, and also much higher than would follow from similar calculations on the basis of table 1. I suspect this high percentage must be due to the way data are collected by the National Crime Records Bureau, the fact that many flawed chargesheets, mistakes of law and refused investigations are not included in the statistics.

Table 1 Disposal of EC cases recorded by the Food Vigilance Squad in the area of fieldwork

	1984	1986	1988	1990
No. of raids conducted	132	119	60	245
No. of cases booked	72 (100%)	40 (100%)	23 (100%)	74 (100%)
Percentage of cases a) withdrawn	26	60	20	7
b) conviction	0	5	0	1
c) acquittal	74	25	32	0
Percentage of pending cases (as in 1992)	0	10	48	92

(data provided by the Food Vigilance Squad, 1992)

Table 2 Disposal of Crime Cases by Courts (all India)

	1988		1990	
	ECA	total crime cases	ECA	total crime cases
1. Total number of cases for trial (including pending trials)	16343 (100%)	5421959 (100%)	21723 (100%)	5333359 (100%)
2. Percentage of cases:				
a) compounded or withdrawn	0.3	1.3	0.3	2.4
b) conviction	10.6	52.2	7.7	48.3
c) acquittal	9.4	5.1	7.1	6.3
3. Percentage of pending cases (at the end of the year)	79.8	41.3	85.0	43.0

(source: Table 19 & 20 *Crime in India*, various volumes)

Both the fact that many EC cases are pending for such a long time, and that a high percentage result in acquittals, are not unrelated. By the time the case is finally heard, the officials who have conducted the investigation some years before have usually been transferred elsewhere. They lose interest and sometimes fail to remember the necessary details. The independent witnesses also have either forgotten the precise details of what happened or have changed their minds. There is sufficient time for the accused traders to convince the independent witnesses not to testify against them. Another important reason for the low percentage of convictions is that there are lapses on the part of the investigation. The officials may not have carried out a proper stock verification; they may not have filed the charge-sheet in time; they may have forgotten to include some essential information on the chargesheet, or they may not have taken all the relevant evidence into account during the investigation.

In short, the first point is that real regulation is a mixture of regulation in the strict sense, money extraction and networking practices.

A second point illustrated by the cases has to do with the arbitrariness and unpredictability of law implementation. Officials may use the law either to collect bribes, to enforce some law-abiding behaviour or both. Officials may or may not take legal action after discovery of an offence, and even if they decide that further action is necessary they may restrict it to confiscation of goods or they may initiate a criminal prosecution.

This unpredictable process of law implementation means that traders are permanently faced with a lot of uncertainties. Not all of them are able to cope with that. Some clearly live with a lot of stress and, as the first case story shows, some even close their business. Others, however, thrive in this climate. The reverse side of unpredictability is that there is a lot of scope for individual treatment, and getting round certain parts of the law. Cultivating friendly relations with officials and bribing them has a high pay-off potentially.

From the viewpoint of the trader, "regulation" of the rice market is both constraining and enabling. It introduces many rules and procedures, which restrict trade activities. On the other hand, these rules and procedures and especially their erratic implementation enables traders to develop their business in new ways. Networking has become an essential part of running a business. Economic survival depends not only on strategic market transactions, but also on the quantity and quality of the social relations established.

In sum, the Essential Commodities Act has contributed¹⁷ to the emergence of a special form of commoditisation, characterised by personal, extra-economic and extra-administrative relations. These relations are not only antagonistic, as the parliamentarians tend to see it. Rather, they contain elements of conflict and cooperation. There are several sources of conflict surrounding legal restrictions, real practices or corruption, but generally the outcome of these struggles is one of mutual benefit. Traders continue their practices more or less as they wish, and officials get paid for not causing too much trouble.

5 Discussion: Law in its Political-Economic Context

After this description of real regulation of paddy/rice wholesale, the question of how this situation can be understood remains. What are the characteristics of the Indian political economy that structure, and are structured by, the interactions and exchanges of the various actors involved? In addition, there is a second question about the observed 'gap' between the strictness of the law on the one hand, and the real trading and regulating practices on the other. How is this to be understood and contextualised?

I would suggest there are three aspects of the political economic context in India that have special relevance for understanding the described practices around the Essential Commodities Act, namely a) the populist character of the Indian state; b) the institutionalised practice of money collection by the government from private parties; and c) the power of the trading class.

Despite the various restrictions on democratic processes introduced during the Emergency and after (Desai, 1986; Kidder, 1987), the cliché that India is the largest parliamentary democracy in the world still contains a lot of truth. Once every five years there are elections for the Union and state parliaments. In some states there are also elected district and village councils. Indian society is thoroughly influenced by this political system. Local leaders are usually attached to political parties and partly derive their legitimacy as leaders from the political party system. The awareness of which party and which politicians are in power at the state and central level is well developed (see Kohli, 1988; and Vanaik, 1990; on India's democracy).

The consequence of this is not so much that democratic participation of the masses is realised (Kothari, 1988), but that it does mean that politicians have to be re-elected to stay in power. The Indian electorate is able to outvote governments and politicians who do not live up to expectations. As a result politicians have to claim and show that

17 That is, in Akkipura as far as rice/paddy wholesale is concerned during the period 1991-1992.

they take the problems of the majority of the population seriously. These concerns have mainly to do with acute poverty and deprivation, and in response to these problems Indian politicians have developed a populist policy discourse. In this discourse the government is pictured as a benefactor that can be trusted and relied upon, one that will take care and protect, distribute the required commodities and services, and one that will also take necessary and harsh steps against all those who get in its way. Discussions of the Essential Commodities Act should also be seen in this light. By blaming the anti-social and anti-national trading community, politicians portray themselves as the major representatives of the poor.

The second relevant aspect of Indian political economy has to do with the organisation of the bureaucracy and the political system. Authors like Wade (1985) and de Zwart (1992) have drawn attention to the importance of regular (and frequent) transfers within the bureaucracy and its relation to the political system. The incidence of corruption is certainly related to these characteristics of the Indian state, although corruption may have other, additional causes as well.

There are very few studies that reveal the systematic, institutionalised character of corruption,¹⁸ but that it is a systematic and institutionalised practice is beyond doubt. Wade's study of the irrigation department is one of the few that describe the structure behind corrupt practices (Wade, 1985). His argument starts from the transfer mechanism, used in many departments in Indian states, where officials are transferred regularly from one post to another. Some posts are more highly sought after than others, which opens up the possibility that officials-in-a-transfer-process try to influence the outcome of this process through payment to those in charge of the transfers, often politicians. This system draws officials into corruption, while politicians receive a good deal of money. Politicians need this money in order to obtain a party ticket for the next election, to finance the election campaign, and to keep their vote-banks (or its leaders) in their constituencies satisfied. Politicians are to a large extent independent entrepreneurs who not only have to manage their own funds, but who also have to secure their own support in their constituencies.

18 In most sociological literature corruption is seen as an individual or shared act of norm-deviation. The institutionalised character, in the sense that 'new' norms and rules of behaviour have replaced the 'broken' ones, is neglected (Mooij, 1992). Economists have conceptualised the phenomenon as rent-seeking (e.g. Krueger, 1974; Buchanan et al., 1980): government controls create a situation of relative scarcity of licences, permits, services etc. People in charge of the distribution of these licences etc. can gain from this situation; there is competition to acquire these gains (rent-seeking). This argument often goes together with a normative position in favour of deregulation. The best way to limit rent-seeking, it is argued, is to limit government (controls). The idea of rent-seeking is basically an application of the economic theory of demand, supply and the individual *homo economicus* in the realm of politics. Corruption or rent-seeking is not seen in relation to structural features of the Indian political economy, but as a phenomenon reducible

This description of corruption as an institutionalised and shared practice fits very well with my own data. Some of the well placed officials I met in Akkipura are said to have paid 1 or 2 lakh to obtain their present post. Hence, it is no wonder that these officials try to collect money from paddy/rice traders wherever they have the opportunity. The EC (Essential Commodities) Act is a helpful instrument in this respect. It defines illegal activities and prescribes strict procedures, and hence, can be used as a threat in order to obtain money. This is not just individual greed, but also part of a systematic process of bribe-sharing that is ultimately related to the organisation of bureaucracy (transfer system) and politics (constituency based representation, machine politics).

So far corruption and bribery have been described as a one-way process: government officials demand money from traders. There is, of course, also another way to view the process: traders attempt to influence policy implementation by paying enforcing officials. This brings us to the third relevant aspect of the Indian political economy, the power of the trading class. There are several arenas in which this power is important: vis-à-vis the state, in relation to labour, and in relation to the primary producers, the paddy suppliers. The first arena is of particular relevance here (see Harriss, 1981, 1984, 1989 on the other arenas). Harriss (1984) describes the Tamil Nadu state as a 'merchant state' because of its inability to implement important measures against the traders' interests, its (officially not intended) private trade stimulating effects on food policy and trade regulation, and its financial dependence on trade (sales-tax is the main source of government income). In other areas of India things may be somewhat different, but in Akkipura traders are a powerful group. Both individually and collectively they react against any measure that aims to curtail their trading activities. They bribe or persuade individual law enforcers, or their association lobbies against certain trade restrictions. Lobbying may be directed towards politicians or towards the administration. They may be, as Harriss (1989) says "*rhetorical and persuasive and/or involve financial transfers*". Several traders are affiliated to political parties, while others have brothers or cousins involved in politics. This increases direct access to important state politicians. For example, when the chief minister visited the area where fieldwork was carried out, representatives of the traders organisation had ample time to discuss their problems and grievances with him. If the traders feel it is necessary, their representatives travel to the state capital to meet the food minister or top officials in his secretariat. Locally, many paddy/rice traders are influential people: they chair village councils, are secretaries of religious associations or own large properties.

to individual optimizers. Moreover, the idea that things would be better after deregulation is often an assumption rather than a result of thorough empirical analysis.

Given this powerful position of the trading class it is not surprising that traders succeed in manipulating government policies to their advantage. In any case, they are 'big shots' compared to the lower rank government officials who have to inspect them. Although they feel they are sometimes harassed and humiliated by these officials, they generally maintain a favourable position for themselves.

I have tried to show how various aspects of the Indian political economy affect people's behaviour when dealing with the EC Act, in that it makes members of parliament take a firm anti-trader stand, pressurises and draws officials into corruption, and gives traders the opportunity to get away with strict regulations. Although there is an apparent contradiction between these various types of behaviour, the outcomes of the different processes do not generally clash. On the contrary, it seems that they are mutually reinforcing. Members of parliament take the opportunity to make or amend a strict law. The stricter the law, the better it is as an instrument for the officials to collect money. They share the money with politicians. Traders pay, but do not develop more consumer-friendly trade practices. This prompts certain politicians once again to propose new, stricter measures, etc. In short, politicians play a double role as legislators and as participants in the chain of money collection. Officials are faced with contradictory demands: they are under pressure to accept bribes but they also have to enforce the law. Traders complain, but cooperate. Hypocrisy characterises all sides, but it generates a more or less stable process.

Most of the described actors gain from this situation, though there are also some traders who are unable to manage and who lose out in this new form of competition, as the first case story illustrates. There is nothing special about this: competition always produces winners and losers, whatever the means of competition. It is very difficult to say in what way consumers are affected by the EC Act. In this paper I have concentrated on only one segment of the paddy/rice market chain: the wholesale millers and traders. There is no automatic translation of developments in this segment to developments in other segments of the marketing chain. Most probably there will be different kinds of effects. On the one hand, the law is a precondition of the Public Food Distribution System because it prescribes the procedures around levy procurement. Although, as we have seen, this procurement does not take place to the extent envisioned in the law, it is not negligible. Poor consumers do get a small benefit out of the Public Distribution System (and so do others; see Mooij, 1994b). On the other hand, it may well be that certain controls sometimes provoke traders to withhold part of their commodities from the market, or to develop parallel market channels in order to increase their profits. Most probably, the effect of the law on consumers is time and place specific. Among other things, it depends on the season,

foodgrain production, prices and the balance of forces between traders and various parts of the government. In any case, with or without the law, profit maximising remains the primary concern of traders, consumers' interest is at best, secondary.

This begs the question of the possibility of regulating the market and supporting poor consumers through trade control. Without being able to elaborate fully, there are two policy implications which follow from this paper. It is strongly suggested that in political economies characterised by a powerful trading class, little can be expected from legal measures alone (or from deregulation, for that matter). Other measures are required that depend less on the cooperation of traders, such as the establishment of alternative market channels. In fact, these exist in India, both in the form of a Public Food Distribution System and in the form of marketing and consumer cooperative societies. Both, however, function unsatisfactorily.¹⁹ A great deal of creative thinking is necessary concerning how to organise alternative market channels that could compete with private traders and have a beneficial effect on prices.

A second policy implication is related to corruption within the government. As long as politicians will demand money from bureaucrats, bureaucrats will demand money from private parties and law enforcement will be problematic. This means that in any case measures are required that change the relationship between officials and the public, as well as the internal relations within the government. So far, trade regulation is a matter of concern between government and traders only. An expansion of the ways in which the public, in this case consumers, can participate in government processes is necessary. In the South Indian state of Kerala, these forms of public action have been realised to some extent. Grassroots organisations, local branches of political parties and trade unions follow policy implementation with keen interest (see Franke and Chasin, 1992). This has also affected the way in which the EC Act is used in Kerala. As I have described elsewhere (Mooij, 1994b), in Kerala the law functions as a threat in the sense that it forces traders to be in harness. Moreover, the law enables consumers to participate in food policy implementation. Consumers or their local representatives can call upon the relatively responsive bureaucracy. Even when they do not know the letter of the law, they know the spirit, and are able and willing to fight for their entitlements. Such mobilisation and public action is necessary in order to increase the government's accountability and efficiency in the implementation of its promises.

19 The PDS in particular is an attempt at a large scale intervention in the food market by creating a parallel channel. The major institution involved, the Food Corporation of India, is a huge foodgrain trading company with a total capital employed of over 60,000 million rupees (Vanaik, 1990:290). Various states also have their own foodgrain trading corporations. The FCI as well as the state food corporations are subsidised by the respective governments which would, in principle, enable them to compete with private trade from a relatively advantageous position. In reality, however, these corporations have not been able to do so; in fact their functioning has become subordinate to the interests of private trade (Harriss, 1984; 1988).

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The Development Policy and Practice Research Group was set up in the Open University towards the end of 1984 to promote research on development issues. Its members have a wide range of disciplinary backgrounds (engineering, sociology, economics, education, geography and anthropology). At present, research is focused in four areas:

- (i) Food production and food security, focusing particularly on exchange relations and foodgrain markets;
- (ii) Alternative technological capabilities and the implications of different technological strategies for development;
- (iii) Women, children and households: the social and cultural context of employment and livelihoods, children and social policy;
- (iv) 'Managing development' and policy as process: the role of national and international non-governmental organisations.

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