

FOOD POLICY AND LEGAL BATTLES

The Essential Commodities Act and PDS in Kerala

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This paper is one in a large collection of papers, articles, books and reports on food policy in India. Indeed, food policy is a widely researched topic in India. To name a few genres, there are several historical overviews and evaluations of PDS; there are economic models and calculations about income and price effects of PDS; there are many studies about agricultural production in relation to price policy.¹ The abundant attention is not surprising: food is indeed an extremely important topic. It is one of the basic necessities in human (and also non human) life. A large part of the population is involved in its production, and food trade and distribution occupies many government officials, traders, politicians and, of course, consumers. Food distribution affects the whole population. Food scarcity and rising food prices are problematic to all. So, as long as food supply is not more or less fully guaranteed, and as long as food is still scarce and expensive for some categories of people, food policy will remain an important topic in political debate and academic studies.

Within the large collection of studies about food policy in India, this paper has a bit an unusual focus. It deals with a relatively little researched topic: the legal organisation of food policy, the law regarding trade and distribution, that is the Essential Commodities Act. In this paper I will examine the Essential Commodities Act, its specific characteristics, how it works in reality, and which role it plays in the implementation of food policy.

What is the Essential Commodities Act? It is a piece of law dating from 1955. The purpose of it, according to its 1955 preamble, is to provide for controls of production, distribution and trade in certain commodities, in the interest of the general public. Today, anno 1995, these 'certain commodities' include foodgrains but also many other commodities such as cement, coir and petrol. In this paper I will concentrate mainly on foodgrains. The Act attempts 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 blackmarketing 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.

This paper examines the Essential Commodities Act and its relation to food distribution policy, that is PDS. I will do so in the context of Kerala. Kerala is an exceptional and interesting case in India for any student of food security and food policy. It is so for two reasons. Firstly, Kerala is very deficient in food. Only a third of its rice requirements -rice being the main staple

1. To give a few references: Acharya (1983), Bhatia (1991), Chopra (1988), Harriss (1984), de Janvry and Subbarao (1986), Kahlon and Tyagi (1983), Radhakrishna (1987), Tyagi (1990), Venugopal (1992).

food- is produced in Kerala itself.² The remaining has to be imported from other parts in India, either by private traders or by the government. This makes Kerala very vulnerable and dependent. The food situation in the state depends on outside markets; prices within the state may fluctuate according to the whims of traders elsewhere; increasing railway charges in the rest of India immediately influence foodgrain prices; if the Government of India would decide to reduce PDS allotment to Kerala or to increase FCI issue prices, Kerala's food situation would immediately be effected. Secondly, Kerala has a good record in food distribution matters. As many observers have stressed,³ the Public Food Distribution in Kerala functions well and has had effects on health, welfare and open market prices that are certainly not negligible.

The questions that concern me here in this paper is: what has been the role of the Essential Commodities Act; how does it work, and in what way has it affected trading practices within Kerala. Who has used it; who has been effected, and what has been the result on food distribution?

My approach to these questions will not be a conventional one. I will regard law formulation and law implementation as arenas of struggle and negotiation, rather than as planned, steered, sequential processes. To be more precise, in the process of law formulation, law is a *subject* of struggle, while in the process of law implementation, law is a *medium* of struggle. This approach is further outlined in the first section. The second section, then, is about the formulation and amendment of the Essential Commodities Act. This process is conceptualised as an arena, in which a struggle among politicians/legislators and between politicians and traders is fought. The third section is about law implementation in Kerala. This section describes how the EC Act is a resource in the struggle between government officials, traders and consumers. The fourth section summarises the argument, and further discusses the specificities in Kerala that make that the EC Act is used as it is.

1. Methodological starting points in the study of law

Perhaps, the easiest trick to clarify my own approach in the study of law is to contrast it with other studies. Therefore, at the risk of simplifying too much, let me describe a legal study. Unfortunately, not much is written about the Essential Commodities Act, but there are a few books and articles.⁴ The most elaborate study I know is a publication by the Indian Law Institute in New Delhi, which dates from 1964 (Jain, 1964). This interesting book summarises commodity control before 1955. It describes the Defence of India Rules, the Food Conferences during the second World War, the administrative processes and the legal principles such as equality before law or the distribution of powers. It, then, describes the procedures as laid down in the Essential Commodities Act and the various orders related to different commodities. It points at some of the lacunae in the law, and it ends with a number of suggestions, most of them meant to "*to ensure that the officers do not misuse their powers*" (p.133). These suggestions all

2. This is my own estimation, based on NSS consumption data and agricultural statistics. Import figures are not available.

3. See for instance Drèze and Sen (1989), Franke and Chasin (1992), Gwatkin (1979), Kannan (1993).

4. These studies are Giri (1987), Jain (1964), Koteswararao (1986), Sengupta (1984).

boil down to the introduction of "*a proper pattern [that is] formally laid down*" (p. 137).

This is a very formal approach: history, official law, official administrative procedures and suggestions are described. The analysis remains within the framework of the law itself. Processes of implementation -or implementation failures- are evaluated against the objectives of the law. A rigorous social or economic contextualisation of the law and its enforcement is not undertaken. Such approach is not exceptional. In fact, most studies of food policy are written from a similar perspective. An example is Bapna (1990), who describes the objectives of Indian food policy, the management structure and the impact, and ends with some policy implications. Although Bapna's study is not about law but about policy, he follows the same line of argumentation. He describes official objectives and the formal structure, and investigates to what extent these are realised in reality.

Such formalistic approach is the dominant one in the study of law and policy in India. It often results in interesting evaluations, though it also has its drawbacks. Underlying this approach there are several assumptions. These are:

- a) that the state is a more or less homogeneous body with an unproblematic authority and legitimacy. Legislators, policymakers, law enforcers and others are seen as representatives of the state, rather than as individuals with their own background, desires, interests, worldviews and abilities. State representatives are assumed to be impartial actors, whose main dedication is to contribute to the pre-defined social change. Often this is not the case. There are fractions or contradictions within the state, or government officials or politicians may have their own interests. In other words, the state is part of civil society as much as it stands above and imposes things on civil society. (See e.g. von Benda-Beckmann and von Benda-Beckmann, 1997; Long and van der Ploeg, 1989; Mooij, 1992)
- b) that law formulation and implementation are technocratic and objective processes that take place in clearly identifiable stages. First, there is problem identification, then there is law formulation, and finally there is implementation. The procedures are fixed, and the criteria for evaluations and monitoring activities are objective and transparent. In reality, the lines are often much more blurred. Moreover, all these stages are processes of social struggle and negotiation, rather than transparent pre-fixed procedures. (See Schaffer, 1984)
- c) that laws and policies form an integrated and consistent whole, that there is unity of purpose and coherence of goals.
- d) that policy statements and legal norms themselves cause action and lay down certain desired patterns of behaviour. The idea is that people follow norms or policies, that norms guide or direct behaviour. In other words, the assumption is that social processes can be steered and governed by some of the involved actors with the help of laws and policies. It is assumed that there is a normative vacuum between the policymaker and enforcer on the one hand, and the people subjected to the policies, rules and procedures on the other. The normative models of the bureaucracy are taken for granted. It is studied in what way reality develops conform, or deviates from these models. In short, the objectives of the law and procedures are reified and human conduct is reduced to living or not living upto the legal prescriptions. (Cf. von Benda-Beckmann, 1989; Moore, 1973; Nelken, 1981)

In short, all these assumptions are debatable. When we look at real practices the state is often not a homogeneous body, social processes are usually very difficult to steer or to engineer, while law itself is often contested.

This means another conceptualisation needs to be developed, in which law formulation and enforcement are seen as *social* processes, rather than as pre-planned procedures that could be learned from a manual.

Such an alternative approach would acknowledge the importance of social struggle, negotiation and bargaining. Law figures in two ways in these struggles and negotiations. On the one hand, since much law defines and allocates economic, political and symbolic (legitimacy) resources, it often is the *subject* of social struggle. At the same time, it is an important *medium* in social struggles.⁵ Many negotiations and fights take on a legal form. The participants in the fights use law as a resource to defend their position.

In other words, the processes of law formulation and enforcement can be conceptualised in terms of arenas, where different actors with different backgrounds, strategies, interests and power are trying to make their claims and to organise the future in a for them favourable way. In some arenas law is at stake, in others law is a medium. Some of the actors in the arena are state institutions, but whether the state or state institutions have a special position in the arena is an empirical question. The outcome of these struggles cannot be known in advance, although some predictions can be made as it is possible to know the strategies and the power of the different actors, as well as the structural characteristics of the arenas.

The conceptualisation of law in terms of arenas for social struggle draws attention to the following questions.

- 1) Who are the participants in the arena? (What are the characteristics of the actors? What kind of former experiences do they bring in? How are they related to each other? How do they relate to people outside the arena?)
- 2) What is at stake in the arena? (Is it the law itself, or are other things at stake? Who has the power to put something on the agenda? What is there to lose, and what is there to win in the struggle?)
- 3) What are the rules prevailing in the arena? (What are the means the actors use, such as legal regulations, political pressure, bribes? Official legal norms are often only one set of norms used by people to legitimise their behaviour or to make claims. What are the formal and informal rules of behaviour?)
- 4) What is the nature of the arena? (Where does the struggle take place? Is the nature of the arena itself at stake in the "game"? Do some participants have a structural advantage due to the form of the arena?)

2. The EC Act and the struggle around its enactment

The Essential Commodities Act came into force in 1955, but some controls on trade and distribution already existed before that date. During World War II the British colonial government had implemented some control measures (under the Defence of India Rules), and since 1946 there has been legislation in the form of the Essential Supplies [Temporary Powers] Act, which was replaced in 1955 by the Essential Commodities Act (see Jain, 1964). Since 1955, the EC Act has undergone several amendments, always with the intention to increase the power of the government vis-à-vis traders. The number of commodities declared essential under

5. This formulation of law as subject and as medium comes from von Benda-Beckmann (1992:1).

the Act has multiplied over the years from 10 items in 1955 to over 60 items in 1992.

Characteristics of the law

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

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 Essential Commodities 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 State governments have also enacted several dozens of control orders. There is a great deal of consensus among traders, lawyers and government officials that legislation regarding trade and distribution of essential commodities has not only become vast, but is 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 are sometimes reformulated after the High Court has nullified the previous one. The argument that the law and its orders are unimplementable refers to the detailed procedures laid down in some orders (for example, in relation to how 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 an administrative 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. The enforcing officials may file a charge-sheet in court and launch a criminal lawsuit against the trader. Thus, for the same offence, a trader may be involved in both an administrative case in the District Collector's office and a criminal case in a judicial court.⁶

6. The law itself does not prescribe under which conditions only an administrative 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 (administrative cases), while the number of prosecutions is much less by comparison. This is a result of what K. von Benda-Beckmann (1981) has called 'forum shopping': the involved actors search (shop) for the most suitable forum of decision making. Generally, traders try to prevent prosecution; they bribe or otherwise convince the officials not to start criminal prosecution. On the other hand, government officials who aim to punish traders may also prevent criminal prosecution. As 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 also Koteswararao, 1986), and as most EC cases do indeed end in acquittal, confiscation without

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 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.⁷ Usually the burden of proof rests with the prosecution (see chapter VII of the Indian Evidence Act).⁸

Since 1955 various amendments have been introduced. 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 bail can no longer be claimed as a matter of right and can be obtained only from judicial courts (and not from the police force or other officials). The 1981 amendment once again made it more difficult to obtain bail and introduced a mandatory minimum imprisonment of 3 months.⁹ This amendment also changed the procedure for appeal after confiscation of commodities -- from an appeal to the judiciary to an appeal to the government -- and it established special courts to deal with EC cases in order to enhance efficiency.

Enactment, legislators and traders

Like many other pieces of law introduced in post-Independence India, the Essential Commodities Act was meant to lay down the legal framework of a new type of development, based on equality and social justice. The idea behind the Act was that malpractices in trade could and should be prohibited and that a more equal distribution of essential commodities could and should be realised. A strict law,¹⁰ it was thought, was an indispensable instrument to

prosecution is often a safer way to punish a trader than to follow both procedures.

7. Other exceptions are related, for instance, to dowry-deaths, bonded labour or child labour, where the burden of proof is with the husband (or his relatives), the employer accused of labour bondage or the employer accused of employing children.

8. 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.

9. 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 offenses 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 thus really amounts to an empty threat (see also Koteswararao, 1986 and Sengupta, 1984).

10. The term 'strict' means that the law, according to its letter and spirit, does not allow for much room for manoeuvre by the traders.

achieve this. To quote one of the advocates of the EC Act in 1955 when the Bill was discussed in the Lok Sabha, the Indian Parliament:

If we are all agreed that a certain amount of control is necessary for the proper distribution of essential commodities in the country, then what is the use or what is the purpose in making the law so loose that the people who violate or the people who break these laws can escape under one or other of the legal quibbles? (Lok Sabha Debate, 21.3.1955:2777)

Nevertheless, not all members of parliament (MPs) were in favour. It was argued that experiences with controls during World War II and afterwards were unsatisfactory, as the following quotes from some MPs make clear.

[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 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. A large part of the discussion focused on the question of whether it is legitimate to make the EC Act stricter than other pieces of law. The proposed Bill, which passed the Lok Sabha in 1955 without amendments, has certain provisions that are rare in Indian law generally.¹¹ 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. As one advocate of the Bill put it:

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 or allegiance 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 which is against hoarding and black-marketeering, and in favour of an equitable distribution of essential commodities and various exceptional measures to realise these; the other, opposed to these measures and in favour of a loose law, a lax administration, black-marketeering and inflation.

From the beginning the EC Act was regarded as an instrument of punishment which thereby produces a deterrent effect. Traders are regarded as potential criminals, as people who

11. 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 abetment to contravene the law.

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 law".¹² The most controversial parts of the original law and most amendments are justified on the basis of this argument: hoarding and black-marketeering 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.

The assumption that traders are always keen to break the law when it suits their interests goes together with an optimistic assumption regarding the behaviour of the enforcing officials. Although in all Lok Sabha discussions of the EC Act some have expressed their doubts about misuse of the law by officials, the advocates have always been able to convince the others that "after all the officers and men and State Governments who will administer these things 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 about 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 (i.e. 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, or closed their shops in protest, and the traders associations sent many petitions and memoranda to the State and central governments. They attempted to convince members of Parliament and the concerned minister 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.

So, despite the fact that traders are generally moneyed people, that they were well-organised and that their protest had a very broad base -- it was supported by almost all central and State traders' associations -- they were not able to influence the process of law-making.¹³ In almost all discussions on the EC Act, the majority of the politicians have been cautious not to side in public with the traders. They are eager to argue the plight of the poor, and to blame

12. From the preamble to the 1974 Amendment.

13. Nelken (1985:77) comes to the same conclusion in the case of the 1965 Rent Act in Britain, on which landlords and tenants interest groups "had remarkably little direct influence".

traders for increasing prices of essential commodities and worsening living conditions. In other words, there is a large discrepancy between the economic power of the trading class and its respectability in the political arena. After 1992, however, outside the official parliamentary arena, and backed by the general political climate favouring liberalisation and deregulation, the continuing efforts of the traders' associations have borne fruit. In 1992-93 a number of important provisions¹⁴ have been dispensed with. As observers put it, the Act was put in cold storage, even though the government did not dare to formally repeal it.¹⁵ In other words, frontstage, the traders were unable to get what they want, but backstage, they were more successful in influencing policy making.

3. Law enforcement in Kerala; political parties, social networks and corruption

There are a large number of government orders issued under the Essential Commodities Act, related to different commodities and different trading practices. Some of these orders are issued by the central state, others by the state governments. According to the 1989 ECA publication in Kerala, the Kerala government issued 34 orders. The most important order as far as foodgrains are concerned is the Kerala Rationing Order 1966, that lays down the procedures of PDS. It prescribes the distribution of rationcards, the appointment of authorised ration retail dealers (ARDs), the appointment of authorised ration wholesale dealers (AWDs), the conditions of these authorisations et cetera.

As said above, in case of violation of the Act or one of the orders, the Act specifies two procedures. The first possibility is a legal suit. There is a special court in Thrissur, where a special judge decides about EC cases. The minimum punishment is three months imprisonment. In Kerala each year, there are about 20-100 cases brought before this special court, as is shown in Table 1. Table 2 gives information about the orders to which these cases refer. It is clear that the Kerala Rationing Order 1966 is a relatively important order in this respect.

TABLE 1

TABLE 2

The second procedure is to deal with the case within the administration. The District Collector has the power to confiscate commodities, as specified in section 6 of the EC Act. Moreover, usually the District Collector is the licensing authority; in case of contravention of the licence provisions he may suspend and/or cancel the licence.

In this section I will describe how traders, enforcing officials, politicians, consumers and others deal with the Essential Commodities Act, and in particular with the Kerala Rationing Order

14. For instance, the mandatory imprisonment, non-bailability of offenses and summary trial ("Food security - Victim of economic reform". Editorial Comment in *Economic and Political Weekly*, January 16-23 1993).

15. "Prices - A stalemate?". Editorial comment in the *Economic and Political Weekly*, November 18, 1995.

(KRO). These various actors use the law in different ways, with different purposes in mind, and with different results. The description in this section is based on fieldwork in Kerala in 1992, when I interviewed many authorised ration dealers (ARDs), some authorised wholesale dealers (AWDs), government officials from various ranks, politicians, advocates and other lawyers and cardholders/consumers. Furthermore, I collected court documents, newspaper clippings, memoranda, pamphlets and other relevant material.

One of the first things that a researcher in Kerala comes to know is the proverbial awareness and involvement of the general public in policy implementation. Regularly, the researcher hears that the Public Distribution System in Kerala works well because people are very aware and well organised. So, as soon as distribution is not working properly, people start protesting, articles will appear in the newspapers, measures will be taken, and soon rationing will be OK again. This is a generally accepted argument, reproduced by politicians, civil servants and academicians. In my research, I found there is certainly some truth in this statement, though also in Kerala consumers/cardholders are complaining about blackmarketing and other malpractices. Also in Kerala they say: *"What can we do? There is no unity in our village, so when I make a complaint there will be repercussions for me. So, it's better to keep quiet"*. People's participation is important, but it should not be exaggerated.

Neither the Essential Commodities Act nor the Kerala Rationing Order have special arrangements for consumers/cardholders. In fact, consumers do not figure in the law, except as clients, that is as people who are entitled to a rationcard and as purchasers of rationed commodities. They are at the receiving end, so to say. Yet in reality, their role is more important. In some cases they function as the true guardians of the law, even though many of them would probably not know the details of the Act. PDS is important to them and many cardholders know their entitlements. If distribution does not work properly they may inform the responsible officials. The rationing inspector or the Taluk Supply Officer (TSO) have to follow up such complaints -and this is the big difference between Kerala and other states, where the bureaucracy is often less responsive. The minimum action on the part of these officials is to order for a suspension of the ARD. Even anonymous complaints may result in a suspension, and suspensions may take place immediately, before a proper inquiry is carried out and before the ARD has got the opportunity to defend his case. Sometimes these complaints are informed by political motives. Political parties want to show their concern with the problems of the common man, of which food is a major one. So, party workers at the local level take the opportunity to pull the bell whenever they suspect some mischief. There was, for instance, a case of several ARDs who sold medium quality rice at the rate of superfine. The partyworkers who had come to know about this went to the police, who then filed several cases in the Special Court. So, obviously, the law functions as a resource in the hands of consumers/cardholders to improve food rationing, as well as in the hands of political parties who may try to increase their local popularity with the help of the Act.

Enforcing officials, in particular rationing inspectors and taluk supply officers, are forced to follow up such complaints. If they would not do so, the cardholders may seek justice with a superior official or with a local politician. Both options are bad for the TSO or the inspector. So, these officials have to take some action, often a temporary suspension. The District Supply Officer may then take further action if this is deemed proper. The result is that, in the minds of the ARDs there is a permanent fear for the officials. Though many of them have never experienced a suspension themselves, they regard it as a routine matter for the officials. That means they are easy to threaten, and they are easy victims of petty corruption and extortion. Many of them pay regular small sums to rationing inspectors, just to maintain a quiet, relatively

peaceful relationship. In this way, the Essential Commodities Act is a useful resource for the enforcing officials. It enables them to make the ARDs oblige to their -usually small- demands for money.

It would be wrong to suggest here that officials and traders (both ARDs and AWDs) are always opposed to each other. Often, there is also an element of cooperation in their relationship. The result of this is, for instance, that in the case of complaints the officials informally inform the trader before they start their official inquiry. Sometimes chargesheets made by the police are flawed, so that the judge has to acquit the accused trader. Sometimes cases are filed in the special court against labourers and drivers, while the traders themselves remain scotfree. Especially the AWDs have a good connection with politicians and officials, which protects them from hassle, threats and legal battles.

The percentage of convictions of EC crimes in the special court is relatively low. Table 3 gives the figures of the Special Court in Kerala. The table shows that the majority of the cases ends in acquittal. Traders who lose their case generally go to the High Court for an appeal, where some of them are acquitted. These acquittals are not included in the table. The table further shows that there is judgewise variation. Some judges acquit all accused persons, while others have a less lenient attitude. Table 4 gives the All-India figures. It is evident that convictions are relatively rare in EC cases as compared to criminal cases generally. There are several reasons for this low conviction rate. Often the witnesses have turned hostile or the police inquiry was insufficient. Or the public prosecutor has neglected the case. There may have been political pressure to drop the case. Or, in case of a violation of the Kerala Rationing Order, it may have been difficult to assert that the concerned commodity was indeed meant to be distributed through PDS. All these reasons may have created doubt in the mind of the judge, of which the accused often gets the benefit.

TABLE 3

TABLE 4

The law does not only restrict traders' activities; it also enables them to undertake certain activities. To give an example, many people are interested to become ARD, so granting licences to these candidates is a delicate task. In many instances, there are several candidates, and the District Supply Officer (DSO) has to select someone on the basis of several criteria laid down in the Kerala Rationing Order. In case the counter-candidate does not acquiesce in the decision, a long legal battle may develop. One of the cases I heard of was of Thomas, who would like to become ARD. In 1984 he applied for a licence. The DSO decided, however, to appoint someone else, a rubber dealer, most probably because this person had bribed the DSO. Thomas searched for an advocate, and the case came before the District Collector. The advocate argued that the rubber dealer had no previous experience with rationing, and succeeded to reverse the order: his client was appointed. Subsequently, the rubber dealer went for an appeal to the commissioner, who decided in Thomas' favour. Then he went to the government. The government ordered for a fresh disposal by the DSO. In the meantime, there was a new DSO, who decided in Thomas' favour. Again the counter-candidate went to the District Collector, the commissioner, and the government, who all decided in Thomas' favour. The last decision came in 1992, that is eight years after the legal battle had started. When I spoke Thomas' advocate, he was waiting to see whether the counter-candidate would go to High Court for a last appeal. Somewhere in this eight year battle, the opposite party had changed. The rubberdealer had lost interest, but

someone else had taken his place, claiming that his financial position and experience were better than Thomas'. Thomas' advocate had done his best to drag the case, and during all these years Thomas had run the rationshop. What is clear is that the Kerala Rationing Order provides for long fights. The described case is not exceptional; I collected many similar examples that illustrate how people make use of the possibility to fight legal battles, in which they make use of the various criteria described in the KRO about who should be appointed as licensee.

One of the questions that occupied me during my fieldwork was under which circumstances officials decide to start a legal case in the special EC court, and under which circumstances they prefer to keep the case within the administration. Almost all cases that come to Thrissur are initiated by the police; the Civil Supplies bureaucracy does not play a role. It seems that all cases that start with a Civil Supplies officer remain within the administration; they are hardly ever handed over to the police for further investigation in order to launch a suit against the trader. This is different in other states. In Karnataka for instance, food inspectors cooperate closely with police investigators. If an official from the Food Department finds some mischief, he often hands over the case to the local police for further investigation and the preparation of a legal suit in the EC court (Mooij, 1995). In Kerala, as far as I know, this rarely happens. It seems the Civil Supplies administration prefers to deal with the cases within the bureaucracy itself. This suggests that the officials regard the law as a resource that strengthens their position vis-à-vis traders, which they do not easily hand over to the police.

4. Conclusion and discussion

I hope to have illustrated in the preceding sections that the Essential Commodities Act is both a subject and a medium in various processes of struggle and negotiation. In and around the parliament it is the subject of a struggle between legislators and traders' organisations. Within the Lok Sabha, politicians of various political parties fight with each other. They have their constituencies to reckon with, in which the trading community may have a prominent position sometimes. In other cases the rank and file of a politician may consist of poor voters mainly, mobilised by local leaders. Discussions in the parliament about the EC Act and food policy generally give legislators an opportunity to stand out. They have an opportunity to blame others of being anti-national or anti-social, implicitly saying that they themselves are the only reliable politicians who do not betray the cause of the poor.

In the arena of law enforcement, the EC Act is a medium of struggle. The Act is not the only medium; there are others such as threats or bribes, but often the use of these different resources goes together. Consumers/cardholders try to safeguard steady PDS supply; in case of mischief the local leaders may inform the officials, who have a useful weapon at their disposal. Civil servants use the law to threaten ration dealers, to enforce law-abiding behaviour or to make small demands for money. Various local leaders compete with each other by taking up the cause of the poor. Sometimes ration dealers are associated with a specific political party; in such case the opposing party will follow distribution practices with keen interest. Traders may also fight among each other. There are many cases where a would-be trader fights against the decision that someone else has been appointed as ration dealer.

In short, the EC Act is used as a resource in various struggles and social processes. What is the influence on food policy? How is food distribution effected by the way various (categories of) people make use of the law? I think that as far as Kerala is concerned, we can say that the law is helpful indeed. Firstly, it functions as a threat; thereby, it forces traders to be in harness.

Secondly, it enables consumers to participate in food policy implementation. Consumers/cardholders or their local representatives can call on the bureaucracy. Even when they do not know the letter of the law, they know the spirit. They know what they are entitled to, and they also know officials have the means to enforce these entitlements.

So far, I have concentrated on ration dealers mainly, without paying much attention to private foodgrain traders. What is surprising in Kerala, is that the Essential Commodities Act hardly plays a role to this latter category of traders. Despite the existence of various orders relating to free-sale foodgrains,¹⁶ the number of cases booked against such traders for violating these orders is limited: 13 out of 144 cases (between 1987 and 1990), as compared to 55 cases related to the Kerala Rationing Order (see table 2). The reason for this is not that law generally does not play a role in interactions between government officials and private foodgrain merchants; the reason is that in the case of private traders, officials prefer to use another law, namely the Food Adulteration Act, 1954. In Kerala, the number of cases booked under the Food Adulteration Act (FAA) is high, much higher than the number of cases booked under the Essential Commodities Act. Why is this the case? The first guess would be, of course, that among private traders there is much more violation of the FAA than of the ECA. This is difficult to check. Most probably, there will be true cases of food adulteration in which prosecution happens on genuine grounds. But, it is also true that the Food Adulteration Act functions in Kerala as a powerful resource in the hands of inspectors that enables them to threaten traders and to demand for bribes, just as the Essential Commodities Act enables them to do when they deal with ration dealers. In the neighbouring state Karnataka things are different. There, the Food Adulteration Act plays virtually no role in the interactions between officials and private foodgrain merchants, while the ECA is very important. It seems implausible that this inter-state difference can be fully explained by an excessive tendency of the Kerala trader to adulterate. There must be other reasons as well which, I guess, have to do with institutional arrangements: who are the enforcing officials; what is their authority; what is the division of tasks and responsibilities between various categories of enforcing officials. Unfortunately, I have not been able to collect information on these issues in a systematic way. So, I cannot say more than these guesses only.

Coming back to the Essential Commodities Act in Kerala, we may ask why the law functions as it functions. I argued that the Act is helpful indeed as far as the implementation of PDS is concerned. What are the conditions that make it helpful, that make that it is used as it is? Without being able to elaborate fully, it is worth mentioning a few underlying conditions. One is the democratic stateform. India is a democracy: politicians and governments can be outvoted. Hence, politicians and governments have to perform. They are held accountable, and have to undertake some action now and then. A second condition is the culture of political participation that exists in Kerala. Political mobilisation exists at all levels. There are many local grassroot organisations, often linked to a political party or trade union. Local leaders are accessible, and have easy access to higher party echelons. This means there are ample channels for participation of the general public in policy implementation. A third condition is the well-developed awareness about food matters in Kerala. Many Keralites realise how dependent Kerala is on

16. For instance, the Kerala Essential Commodities (Maintenance of Accounts and Display of Prices and Stocks) Order, 1977; the Kerala Foodgrain Dealers' Licensing Order, 1963; the Kerala Paddy and Rice (Declaration and Requisition of Stocks) Order, 1966; the Kerala Rice (Regulation of Movement) Order, 1966.

outside markets. There is a permanent latent fear in the mind of many Keralites that food security of the state may be threatened one day. Political parties are aware of this; food prices and food distribution figure high on their agendas.

If indeed, these three conditions are important elements explaining the role of the Essential Commodities Act in Kerala, it is immediately clear that the same law will have a different function elsewhere. Especially the second and the third condition are very Kerala-specific. I did fieldwork in Karnataka as well, and it was obvious indeed that the same law was used differently there, and had a different impact. But about that, I have published elsewhere.¹⁷

17. See Mooij (1996).

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References

- ACHARYA, K.C.S. (1983)
Food security system of India. Evolution of the bufferstocking policy and its evaluation. Concept Publishing House
- BAPNA, S.L. (1990)
"Food security through PDS: the Indian Experience". In: D.S. Tyagi and Vijay Shankar Vyas (eds.) *Increasing access to food. The Asian experience.* Sage Publications, New Delhi etc. pp. 99-144
- BENDA-BECKMANN, Franz, von (1989)
"Scape-goat and magic charm. Law in development theory and practice". *Journal of Legal Pluralism*, No.28, pp. 129-148
- BENDA-BECKMANN, Franz, von (1992)
"Introduction: understanding agrarian law in society". In: F. von Benda-Beckmann and M. van der Velde (eds.) *Law as a resource in agrarian struggles.* Wageningse Sociologische Studies No. 33, Agricultural University Wageningen
- BENDA-BECKMANN, Franz, von, and Keebet von Benda-Beckmann (1997)
"State and off-state; where structures merge". In: N. Long and Ph. Quarles van Ufford (eds.) *Practice and policy. Transformations in developing countries.* Routledge, London, (in press)
- BENDA-BECKMANN, Keebet, von (1981)
"Forum shopping and shopping forums: dispute settlement in a Minangkabau village in West Sumatra". *Journal of Legal Pluralism*, No. 19, pp. 117-159
- BHATIA, B.M. (1991)
Famines in India. Konark Publishers, Delhi
- CHOPRA, R.N. (1988)
Food policy in India. A survey. Intellectual Publishing House, New Delhi
- DRÈZE, Jean and Amartya Sen (1989)
Hunger and public action. Clarendon Press, Oxford
- FRANKE, Richard W. and Barbara H. Chasin (1992)
Kerala. Development through radical reform. Promilla and Co. Publishers
- GIRI, H.N. (1987)
Consumers, crimes and the law. Ashish Publishing House, Delhi
- GWATKIN, Davidson R. (1979)
"Food policy, nutrition planning and survival. The cases of Kerala and Sri Lanka". *Food Policy* Vol. 4, No. 4, pp. 245-256
- HARRISS, Barbara (1984)
State and market. Concept, New Delhi
- JAIN, M.P. (1964)
Administrative process under Essential Commodities Act, 1955. The Indian Law Institute Study No. 9, Tripathi Bombay
- JANVRY, Alain, de and K. Subbarao (1986)
Agricultural price policy and income distribution in India. Oxford University Press, Delhi etc.
- KAHLON, A.S. and D.S. Tyagi (1989)
Agricultural price policy in India. Allied Publishers, New Delhi
- KANNAN, K.P. (1993)

- "Public intervention and poverty alleviation. A study of the declining incidence of poverty in Kerala". Paper presented at Centre for Asian Studies Amsterdam (publication forthcoming)
- KOTESWARARAO (1986)
 "What aids the enforcement of the Essential Commodities Act, 1955 and the functioning of the public distribution system ?" *Criminal Law Journal*, Vol. 92, pp. 65-72
- LONG, Norman and Jandouwe van der Ploeg (1989)
 "Demythologizing planned intervention: an actor perspective". *Sociologia Ruralis* Vol. XXIX, No. 3/4, pp. 226-249
- MOOIJ, Jos E. (1992)
 "Private pockets and public policies. Rethinking the concept of corruption". In: F. von Benda-Beckmann and M. van der Velde (eds.) *Law as a resource in agrarian struggles*. Wageningse Sociologische Studies No. 33, Agricultural University Wageningen
- MOOIJ, Jos E. (1996)
Food Policy and Politics. The Public Distribution System in Karnataka and Kerala, South India. Ph.D. thesis University of Amsterdam (publication forthcoming)
- MOORE, Sally Falk (1973)
 "Law and social change: the semi-autonomous social field as appropriate field of study". *Law and Society Review* VII, pp. 719-746
- NELKEN, David (1981)
 "The 'gap problem' in the sociology of law: a theoretical review". In: *Windsor Yearbook of access to justice*
- NELKEN, David (1985)
 "Legislation and its constraints: a case study of the 1965 British Rent Act". In: Adam Podgorechi, Christopher J. Whelan and Dinesh Khosla (eds.) *Social systems and legal systems*. Croom Helm, London etc.
- RADHAKRISHNA, R. (1991)
 "Political economy of grain market intervention". In: C.T. Kurien, E.R. Prabhakar and S. Gopal (eds.) *Economy, society and development. Essays and reflections in honour of Malcolm S. Adiseshiah*. Sage Publications, Delhi etc, pp. 86-106
- SCHAFFER, Bernard (1984)
 "Towards responsibility: public policy in concept and practice". In: E.J. Clay and B.B. Schaffer *Room for manoeuvre. An exploration of public policy planning in agriculture and rural development*. Heinemann Educational Books, London, pp. 142-190
- SENGUPTA, Pradyot Kumar (1984)
 "A few thoughts on the Essential Commodities (Special Provisions) Act, 1981" *Criminal Law Journal*, Vol 90, pp. 41-46
- TYAGI, D.S. (1990)
Managing India's food economy. Problems and alternatives. Sage Publications, New Delhi etc.
- VENUGOPAL, K.R. (1992)
Deliverance from hunger. The Public Distribution System in India. Sage Publications, New Delhi

Table 1. Number of cases in special EC court in Kerala

	number of cases
1983	16
1984	64
1985	66
1986	70
1987	72
1988	103
1989	100
1990	105
1991	46
1992 (first 7 months)	23

source: Special Court Thrissur

Table 2 Alleged violations of orders^{*)} in special EC court in Kerala

	1987	1988	1989	1990
	n = 30 (100%)	n = 49 (100%)	n = 27 (100%)	n = 38 (100%)
Kerala Rationing Order, 1966	3 (10%)	24 (49%)	12 (44%)	16 (42%)
Kerala Coconut Husk Order, 1988 or Coir Retting Order, 1968	5 (17%)	1 (2%)	2 (7%)	4 (11%)
Kerala Kerosine Control Order, 1968	4 (13%)	6 (12%)	5 (19%)	5 (13%)
Kerala Cement Distribution Order, 1974	10 (33%)	3 (6%)	3 (11%)	
Kerala Foodgrains Dealers' Licensing Order, 1967	3 (10%)	8 (16%)	1 (4%)	
Kerala Edible Oil Seeds, Edible Oil (...) Order, 1975	2 (7%)	7 (14%)	4 (15%)	6 (16%)
Other	3 (10%)	6 (12%)	1 (4%)	7 (18%)

*) The column totals are sometimes more than n, the number of cases, as in some instances the charge was that more than one order was violated.

source: Special Court Thrissur. The information in this table refers to a limited number of cases only, as the information available in the Thrissur court was incomplete.

Table 3 Disposal of EC Cases in special court Thrissur by judges (1985-90)

	Total	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Judge 6
	n = 212	n = 10	n = 3	n = 42	n = 68	n = 18	n = 71
Percentage of cases							
a) acquitted	52	100	100	81	47	39	34
b) convicted	26	0	0	12	29	6	42
c) both	22	0	0	7	24	56	24

source: Special Court Thrissur

Table 4 Disposal of crime cases by Courts (All India)

	1988		1990	
	ECA	total crime cases	ECA	total crime cases
Total number of cases for trial (including pending trials)	16343 (100%)	5421959 (100%)	21723 (100%)	5333359 (100%)
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
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