

PA-ABS-140
15N 8584

M51

**A REVIEW OF EXISTING LEGAL IMPEDIMENTS
OF PRIVATE FOODGRAINS TRADE**

Shamsur Rahman

**International Food Policy Research Institute
Bangladesh Food Policy Project**

**Research funded by IFDC under USAID Contract No. 388-0060-HCC-8701-01
Reproduction funded by IFPRI under USAID Contract No. DAN-4111-B-00-9112-00
Delivery Order No. 7**

January 1994

The authors accept full responsibility for the views expressed in this report. The contents do not necessarily reflect the official position of USAID or Government of Bangladesh.

Volume I

TEXT OF THE REVIEW
(with Annexures: 1-22)

A
REVIEW OF
EXISTING LEGAL IMPEDIMENTS TO
PRIVATE FOODGRAINS TRADE

SHAMSUR RAHMAN
Advocate
Supreme Court of Bangladesh
CONSULTANT

· /

C O N T E N T S

	Page
I. Chapter I	
Background History of Emergency	
Legislations regarding foodstuffs	1
2. Chapter II	
Orders relating to foodgrains and other foodstuffs	20
3. Chapter III	
Acts relating to foodgrains and other foodstuffs	47
4. Chapter IV	
Legislations affecting private foodgrains trade	65
5. Chapter V	
Recommendation and Conclusion	79
6. Annexures	85
1. Notification No.223-M, dated the 3rd September,1939, Gazette of India, Extraordinary.	
2. Notification No.221, dated the 3rd September,1939, Gazette of India, Extraordinary.	
3. Extract of section 102 of the Government of India Act, 1935 (26 Geo.5 c.2).	
4. Extract of section 17 of the Defence of India Act, 1939 (35 of 1939).	
5. Extract of Rule 81 of the Defence of India Rules.	

6. Extract of the India (Proclamation of Emergency) Act, 1946 (9 & 10 Geo.6, c.23).
7. Extract of the India (Central Government and Legislature) Act, 1946 (9 & 10 Geo.6, c.39).
8. Notification No.F.54/46-G.G.(A), dated the 1st April, 1946, Gazette of India, Extraordinary.
9. The Emergency Provisions (Continuance) Ordinance, 1946 (Ord. XX of 1946).
10. The Essential Supplies (Temporary Powers) Ordinance, 1946 (Ord. XVIII of 1946).
11. The Essential Supplies (Temporary Powers) Act, 1946 (Act XXIV of 1946).
12. Extract of section 18 of the Indian Independence Act, 1947 (10 & 11 Geo.6, c.30).
13. Resolution of the Constituent Assembly (Legislature) of Pakistan - Extract from the Gazette of Pakistan, dated the 17th April, 1953, Part I. *Notification No. Re-5(1)/53, dated the 13th April, 1953*
14. Extract of the preamble and section 17 of the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (Ord. X of 1955).
15. Extract of Article 106 and Fifth Schedule to the 1956 Constitution of the Islamic Republic of Pakistan.
16. Extract of the East Pakistan (Essential Supplies) Ordinance, 1956 (E.P.Ord. VI of 1956).
17. The Essential Supplies Act, 1957 (Act III of 1957).
18. Extract of the East Pakistan Control of Essential Commodities Ordinance, 1956 (E.P. Ord. X of 1956).
19. The East Pakistan Control of Essential Commodities Act, 1956 (E.P.Act I of 1956).
20. Extract of the Statement of Objects and Reasons appended with the East Pakistan Control of Essential Commodities Bill, 1956 (Bill No. 14 of 1956).

21. The East Pakistan Control of Essential Commodities (Extension to the District of Chittagong Hill-Tracts) Ordinance, 1970 (E.P. Ord. I of 1970).
22. Laws Continuance Enforcement Order, dated the 10th April, 1971 (Published in the Bangladesh Gazette, extraordinary, dated the 2nd May, 1972 (Part I).
23. The East Bengal Foodstuffs Price Control and Anti-Hoarding Order, 1953.
24. The East Bengal Essential Foodstuffs Anti-Hoarding Order, 1956.
25. The East Bengal Foodgrains (Disposal and Acquisition) Order, 1948.
26. The Bengal Rice Mills Control Order, 1943.
27. The East Bengal Flour and Dal Mills and Chakkis Control Order, 1948.
28. The East Bengal (Compulsory Levy of Foodgrains) Order, 1948.
29. The East Pakistan (Procurement of Foodgrains in Border-belt) Order, 1965.
30. The East Pakistan (Procurement of Foodgrains) Order, 1965.
31. The East Bengal Cordoning Order, 1947.
32. The East Pakistan Cordoning Order, 1958.
33. The Bangladesh Cordoning Order, 1974.
34. The East Bengal Foodgrains (Movement Control) Order, 1949.
35. The Bengal Rationing Order, 1943.
36. The East Bengal Urban Area Rationing Regulations, 1956, together with the Modified Rationing Order, 1956.

P.T.O.

11

37. The East Bengal Rationing (Establishment) Enquiry Order, 1949.
38. The East Bengal Rationing Preparatory Enquiry Order, 1949.
39. The Guest Control Order, 1984.
40. The Emergency (Regulation of Rationed Articles and Internal Procurement of Rice and Paddy) Order, 1975, together with the extract of the Emergency Powers Rules, 1975.
41. The East Pakistan Mustard Oil Seeds and Oil Distribution Order, 1957.
42. The East Pakistan Salt (Import and Distribution) Order, 1958.
43. The East Pakistan Sugarcane Prices Control Order, 1962.
44. The East Pakistan Gur, Sugar and Sugar Products (Manufacture and Movements) Control Order, 1956.
45. The Sugar and Sugar Products Control Order, 1948.
46. The Hoarding and Black Market Act, 1948 (XXIX of 1948).
- 46(1). The Essential Articles (Price Control and Anti-Hoarding) Act, 1953 (E.B.Act XXII of 1953).
47. The Food (Special Courts) Act, 1956 (E.P.Act X of 1956).
48. The East Pakistan Warehouses Ordinance, 1959 (E.P.Ord. LXVI of 1959).
49. The East Pakistan Agricultural Produce Markets Regulation Act, 1964 (E.P.Act IX of 1964).
50. The Foodgrains Supply (Prevention of Prejudicial Activity) Ordinance, 1979 (Ord. XXVI of 1979).
51. The Sugarcane Act, 1934 (XV of 1934).
52. The Agricultural Produce (Grading and Marking) Act, 1937 (Act I of 1937).

53. The Agricultural Produce Cess Act, 1940 (Act XXVII of 1940).
54. The Coconut Committee Act, 1944 (Act X of 1944).
55. The Oilseeds Committee Act, 1946 (Act IX of 1946).
56. The East Pakistan Pure Food Ordinance, 1959 (E.P.Ord. LXVIII of 1959).
57. The East Pakistan Sugar (Road Development Cess) Ordinance, 1960 (E.P.Ord. XXIII of 1960).
58. The Inter-Provincial Trade Ordinance, 1964 (Ord. IV of 1964).
59. The Cantonments Pure Food Act, 1966 (Act XVI of 1966).
60. The Import of Goods (Price Equalisation Surcharge) Act, 1967 (Act III of 1967).
61. The Bangladesh Scheduled Offences (Special Tribunals) Order, 1972 (P.O.No. 50 of 1972).
62. Extract of Article 225 of the 1962 Constitution of Pakistan.
63. Proclamation (Withdrawal of Martial Law imposed on 15th August, 1975, published in the Bangladesh Gazette, Extraordinary, dated the 7th April, 1979).
64. Extract of Martial Law Regulation No. I of 1982, paragraph 21, dated the 24th March, 1982.
- 64(1). Martial Law Regulation No. 97, dated the 12th May, 1985.
- 64(2). Proclamation of Withdrawal of Martial Law, dated the 10th November, 1986.

CHAPTER I

Background History of Emergency Legislations regarding foodstuffs.

On the 3rd September, 1939, the then Governor General of India His Excellency Victor Alexander John, Marquess of Linglithgow, by a ¹Proclamation proclaimed that war had broken out between His Majesty and Germany. On the same day, by another ²Proclamation, the Governor General proclaimed in pursuance of sub-section (I) of ³section 102 of the Government of India Act, 1935, ^(26 Geo. 5, c 2) that a grave emergency existed whereby the security of India was threatened by war. After the later proclamation was issued, the Governor General made and promulgated the Defence of India Ordinance, 1939 (Ord. V of 1939) and the Defence of India Rules, 1939. Subsequently, the Defence of India Ordinance, 1939 (Ord. V of 1939), was repealed by the Defence of India Act, 1939 (Act 35 of 1939).

The Defence of India Rules, were ~~framing~~ framed under section 2 of the Defence of India Ordinance, 1939 (Ord. V of 1939). The Defence of India Act, 1939 (35 of 1939), while repealing the Defence of India Ordinance, 1939 (Ord. V of 1939), specifically provided in ⁴section 21 of that Act that the Rules made under the repealed Ordinance would be deemed to have been made under the Act and would have effect accordingly. Thus, the Defence of India Rules and all other subordinate legislations, namely, Orders, regulations, notifications, etc., issued under any provision of the said Rules were saved and continued in force.

Section 102 of the Government of India Act, 1935, laid down the legislative powers of the Federal Government during a Proclamation of Emergency. When the proclamation of Emergency would be declared, the Federal Legislature would have power to legislate for a Province or any part thereof with respect to any matters enumerated in the Provincial Legislative List. Thus, ⁵rule 81 of the Defence of India Rules empowered the Federal Government to make Orders for regulating or prohibiting production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles which were matters clearly falling within the legislative competence of the Provincial Legislature but, for the proclamation of Emergency, the Federal Legislature had powers to do so.

When the Second World War ended, and the time for revocation of the Proclamation of Emergency issued under sub-section (I) of section 102 of the Government of India Act, 1935, came, the British Parliament enacted ⁶the India (Proclamation of Emergency) Act, 1946 (~~1946~~ (9 & 10 Geo.6, c 23)), amending sub-section (I) of section 102 of the Government of India Act, 1935, giving further wide powers to the Federal Legislature "to make laws, whether or not for a Province or any part thereof, with respect to any matter not enumerated in any of the lists in the Seventh Schedule" to the said Act. Thus, the Federal Legislature had unfettered powers to make laws on any subject it deemed proper. The British Parliament enacted another law, namely, ⁷the India (Central Government and Legislature) Act, 1946

(9 & 10 Geo. 6, c 39), which provided that notwithstanding contained anything in the Government of India Act, 1935, the Indian Legislature should, during the period mentioned in section 4 thereof, have power to make laws with respect to trade and commerce (whether or not within a Province) in, and the production, supply and distribution of, amongst other items, food-stuffs including edible oil seeds and oil. The maximum period of validity of such laws was fixed at 5(five) years from the date on which Proclamation of Emergency issued on 3rd September, 1939, ceased to operate.

On the 1st April, 1946, the Proclamation of Emergency issued on the 3rd September, 1939, was subsequently revoked by another ⁸Proclamation issued by, Archibald Percival, Viscount Wavell, the then Governor General of India under clause (a) of sub-section (3) of section 102 of the Government of India Act, 1935. Though the proclamation of Emergency was revoked, it would, under clause (c) of that sub-section, cease to operate at the expiration of six months, unless before the expiration of that period it had been approved by Resolution of both Houses of Parliament. Under sub-section (4) of section 102 of the Government of India Act, 1935, a law made by the Federal Legislature which that legislature would not but for the issue of a proclamation of Emergency had been competent to make would cease to have effect on the expiration of a period of six months after the proclamation had ceased to operate, except as respect things done or omitted to be done before the expiration of the said period. Thus, it would be found out that the laws which encroached the provincia

field of legislation were kept alive till the 30th September, 1946.

On the 25th September, 1946, two Ordinances were made and promulgated by the Governor General of India. The first was ⁹the Emergency Provisions (Continuance) Ordinance, 1946 (Ord. XX of 1946), and the other was ¹⁰the Essential Supplies (Temporary Powers) Ordinance, 1946 (Ord. XVIII of 1946). The Emergency Provisions (Continuance) Ordinance, 1946 (Ord. XX of 1946), provided for the continuance of certain provisions of the Defence of India Act, 1939 (XXXV of 1939), and specially the Defence of India Rules with necessary modifications. It may be seen that the original rule 8I of the said Rules was not continued under the aforesaid Ordinance but was substituted by a new rule the subject matter of which was quite different from the previous rule because of the fact that the Federal Government of India felt the necessity of making a new law on the subject matter. Thus, ¹⁰the Essential Supplies (Temporary Powers) Ordinance, 1946 (Ord. XVIII of 1946), was made and promulgated by the Governor General of India to provide for the continuance, during a limited period, of powers to control the production, supply and distribution of, and trade and commerce in, essential commodities which included foodstuffs (including edible oilseeds and oils)/^{and} food-crops which term included sugar-cane. This power of making laws on the provincial field of legislation was earlier conferred on the Federal ~~Government~~ Legislature by the ⁷India (Central Government and Legislature) Act, 1946 (9 & 10 Geo. 6, c 39). Thus, section 3 of the said Ordinance made provisions empowering the Federal Government to make order for restricting or prohibiting the

production, supply and distribution of, or trade and commerce in, essential commodities for maintaining or increasing supplies thereof or for securing their equitable distribution and availability at fair prices. The Federal Government, by notified order, could make provisions for -

- (a) regulating by licences, permits or otherwise the production and manufacture of any essential commodity;
- (b) bringing under cultivation any waste ~~ix~~ and arable land for the growing thereon of food-crops generally or of specified food-crops;
- (d) controlling the prices at which essential commodities could be bought or sold;
- (d) regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;
- (e) prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
- (f) regulating any person holding any stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances as might be specified in the order;
- (g) regulating or prohibiting any class of commercial or financial transactions relating to food-stuffs which in the opinion of the authority making the order were, or if unregulated were, likely to be detrimental to public interest;

- (h) collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (i) requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to the business and to furnish such information relating thereto as might be specified in the order.

However, under section 4 of the said Ordinance, the Federal Government could, by notified order, delegate its powers to the Provincial Government or such officer or authority subordinate to the Provincial Government for making orders under section 3 of the aforesaid Ordinance. The Federal Government could, under section 6 of the said Ordinance, give directions to the Provincial Government for carrying ~~on~~ into execution in the Province of any order made or deemed to have been made under section 3. Section 7 of the Ordinance was an over-riding clause which provided that any order made or deemed to be made under section 3 would have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or any instrument having effect by virtue of any enactment other than this Ordinance,

Section 5 of the Ordinance was a saving provision for certain provisions of the Defence of India Rules made or deemed to be made under section 2 of the Defence of India Act, 1939. Rules 80-B and 8I (original) were not continued in force by the Emergency Provisions (Continuance) Ordinance, 1946 (Ord. XX of

1946), the making of this provision is a sine qua non. All orders, whether notified or not, made by whatever authority under rule 80-B, or sub-rule (2) of sub-rule (3) of rule 81 of the Defence of India Rules, in respect of any matter referred to in section 3 of the Ordinance, which were in force immediately before the commencement of the said Ordinance would, notwithstanding the expiration of the said rules, continue in force so far as consistent with provisions of the said Ordinance and would be deemed to be orders made under section 3 of the said Ordinance. Furthermore, it provided that all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement would likewise continue in force and would be deemed to be made, granted or issued in pursuance of the said Ordinance.

The Ordinance made provisions regarding imposition of penalties for the contravention or attempt to contravene any provisions of the orders made or deemed to be made under section 3 and also made provisions for vicarious liability. It further provided that burden of proof would lie on the person who would be prosecuted for the contravention of an order made or deemed to be made under section 3 of the Ordinance which prohibited him from doing an act or being in possession of a thing without lawful authority or without permit, licence or other document that he had such authority, permit, licence or other document.

Subsequently, the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946), was, as required under the provisions of the Constitution, converted into an Act of

Parliament. The Act was titled as ^{I1}the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946).

After the end of the Second World War, the political strife to win independence gained momentum and at last the Indian people succeeded in their endeavour. The British Government conceded to the will of the people of India and agreed to divide India to create two Dominions, namely, India and Pakistan. To give a legal cover, the British Parliament enacted ^{I2}the Indian Independence Act, 1947 (10 & 11 Geo. 6, c 30). Sub-section (3) of section 16 of the said Act laid down that the law of British India and the several parts thereof existing immediately before the appointed day, that is, 15th August, 1947, "shall, so far as applicable and with necessary adaptations, continue as the law of each of the Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other legislation or other authority having power in that behalf.". Thus all laws existing before Pakistan became of Dominion, were continued in force. Thus, all laws including the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), continued in force. However, as this law was a temporary legal measure after having been empowered by the provisions of India (Central Government and Legislature) Act, 1946, the Government of Pakistan kept this Act in force by extending from time to time the period of its validity by some legal instrument. One such ^{legal instrument a} Resolution passed by the Constituent Assembly (Legislature) reads as follows:-

"In pursuance of the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, this

Assembly hereby approves the extension of the period mentioned in section 4 of the said Act for a further period of twelve months commencing on the first day of April, 1953."

However, the power to extend the Essential Supplies (Temporary Powers) Act, 1946 by Resolution came to an end and the said Act would have expired on the 31st March, 1955, had an Ordinance, namely ¹⁴the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (Ord. X of 1955), not been made and promulgated by the Governor General of ~~Pakistan~~ before the expiry of the aforesaid Act in exercise of the powers conferred on him under sub-section (1) of section 42 of the Government of India Act, 1935. From the preamble of this Ordinance it would be clearly evident that this Ordinance was made and promulgated with a view to provide for the continuance of powers to control the production, treatment, storage, movement, transport, supply, distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain commodities which included food-stuffs including edible oilseeds and oils. Section 17 of this Ordinance repealed the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946). This section further provided that any order made or deemed to be made under the repealed Act and in force immediately before the commencement of the said Ordinance would continue in force and be deemed to be an order made under the said Ordinance. It further provided that all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement would

likewise continue in force and be deemed to be made, granted or issued in pursuance of this Ordinance.

In order to dispel all doubts, a provision was made in sub-section (3) of section 17 of the said Ordinance to the effect that -

"for the removal of doubts it is hereby declared -

- (a) that for the purposes of the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946) the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), and this Ordinance, an order of the nature referred to in section 5 of the Essential Supplies (Temporary Powers) Ordinance, 1945, made before the commencement of that Ordinance and not previously rescinded shall be deemed to be, and always to have been, an order in force immediately before such commencement, notwithstanding that such order or parts of it may not then have been in operation, either at all or in particular areas;
- (b) that for the purposes of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), and this Ordinance, an order made or deemed to be made under the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946), and not rescinded prior to the commencement of the said Act shall be deemed to be an order in force

immediately before such commencement, notwithstanding that such order, or parts of it, may not then be in operation, either at all or in particular areas;

- (c) for the purposes of this Ordinance, an order made or deemed to be made under the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), and not rescinded prior to the commencement of this Ordinance shall be deemed to be an order in force immediately before such commencement, notwithstanding that such order, or parts of it, may not then be in operation either at all or in particular areas."

In the meantime, the 1956 Constitution of the Islamic Republic of Pakistan came into force on the 23rd March, 1956. ¹⁵Article 106 of the said 1956 Constitution laid down that a Provincial Legislature would have exclusive power to make laws for a Province or any part thereof with respect to any matters enumerated in the Provincial List. The Provincial Legislature had power but not exclusive power to make laws with respect to any matter enumerated in the concurrent list. Industries, trade and commerce within the Province, production, manufacture, supply and distribution of goods, manufacture, supply and distribution of salt, adulteration of food-stuffs and other goods were matters enumerated in the Provincial list and, therefore, the Provincial Legislature had exclusive power to make laws on the subject matters. Price control, being a subject matter, which was enumerated in the concurrent list of legislation, the Provincial

Legislature had powers but not exclusive powers to legislate on the subject matter. Thus, the 1956 Constitution of the Islamic Republic of Pakistan empowered the Provincial Legislature of the then East Pakistan to enact a law on price control, food-stuffs and trade and commerce within the Province. Accordingly, on the 25th April, 1956, the date on which the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (made and promulgated by the Central Government of Pakistan) would have expired, the Provincial Government of East Pakistan, in their anxiety to continue the orders for the welfare and well-being of the people of the Province, made and promulgated an Ordinance, namely, ¹⁶the East Pakistan (Essential Supplies) Ordinance, 1956 (E.P.Ord.VI of 1956). This Ordinance was enacted to provide for powers to control the production, treatment, keeping, storage, movement, transport, supply and distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain commodities (which included food-stuffs) within East Pakistan. Section 16 of this Ordinance made provisions to save the orders made or deemed to have been made under the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (Ord. X of 1955), and which were *in force immediately before the commencement of the Ordinance (25th April, 1956). The Orders were* to remain in force until such time as the Provincial Government or an officer authorised by the Provincial Government made orders revoking or cancelling them. The orders issued under the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (ord. X of 1955), would be deemed to be orders made under the Ordinance, that is, the East Pakistan (Essential Supplies) Ordinance, 1956 (E.P.Ord. VI of 1956).

On the 25th April, 1956, the date on which the Provincial Government made and promulgated the East Pakistan (Essential Supplies) Ordinance, 1956 (E.P.Ord. VI of 1956), the Central Government of Pakistan also made and promulgated the Control of Essential Commodities Ordinance, 1956 (Ord. IV of 1956), repealing the Essential Supplies (Continuance of Temporary Powers) Ordinance 1955 (Ord. X of 1955). Again, on the 10th May, 1956, the Central Government of Pakistan made and promulgated another Ordinance, namely, the Control of Essential Commodities Ordinance, 1956 (Ord. V of 1956). This Ordinance repealed the control of Essential Commodities Ordinance, 1956 (Ord. IV of 1956), and the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (Ord. X of 1955); which was repealed earlier by Ordinance IV of 1956. No reason could be known as to why it was necessary to repeal again the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (Ord. X of 1955). Thus, the last mentioned Ordinance was repealed twice.

It may be stated here that the Control of Essential Commodities Ordinance, 1956 (Ord. IV of 1956), and the Control of Essential Commodities Ordinance, 1956 (Ord. V of 1956), both made and promulgated after the coming into force of the 1956 Constitution of the Islamic Republic of Pakistan, provided for price control and trade and commerce between the Provinces and between a Province and the Federal Capital in respect of certain commodities including food-stuffs which term included the edible oilseeds and oils, drugs and medicine, infant and patient foods and allied articles. It may be noted that the Central Government avoided making laws on the matters enumerated in the Provincial list of the 1956 Constitution.

The Central Government again made and promulgated the Essential Supplies Ordinance, 1956 (Ord. XXI of 1956), repealing the Control of Essential Commodities Ordinance, 1956 (Ord. V of 1956). Finally, the Central Legislature enacted¹⁷ the Essential Supplies Act, 1957 (Act III of 1957) repealing the Essential Supplies Ordinance, 1956 (Ord. XXI of 1956). Though this Act is still in force in Bangladesh, yet it does not serve any purpose rather the purposes for which it was enacted do no longer exist and, therefore, this Act may be repealed.

It has already been stated the time at which, and the circumstances under which, the Provincial Government made and promulgated the East Pakistan (Essential Supplies) Ordinance, 1956 (E.P.Ord. VI of 1956). This Ordinance was subsequently repealed by¹⁸ the East Pakistan Control of Essential Commodities Ordinance, 1956 (E.P.Ord. X of 1956). A savings clause was enacted in which it continued in force any order made or deemed to have been made under the repealed Ordinance until the Provincial Government or any officer authorised by it rescinded the orders so continued in force. Likewise, all appointments made, licences or permits granted and directions issued under the repealed Ordinance were continued in force and were deemed to be made, granted or issued under the corresponding provisions of this Ordinance.

Later,¹⁹ the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956), was enacted by the Provincial Legislature of East Pakistan after repealing the East Pakistan Control of Essential Commodities Ordinance, 1956 (E.P.Ord. X of 1956). The time and circumstances leading to the enactment of the

Act has very lucidly and clearly been stated in the Statement of Objects and Reasons appended with the ²⁰ Bill which runs thus -

"The Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 as enacted by the Government of Pakistan expires from the 25th April, 1956. It provided for some controls to be exercised over production, manufacture, supply and distribution of some essential commodities like drugs and medicine, textiles, spare machine parts, iron and steel materials, cement and paper (including newsprint), etc., On the expiry of the said Ordinance, the Provincial Government promulgated an Ordinance namely the East Pakistan (Essential Supplies) Ordinance, 1956 for the aforesaid purpose. On the expiry of the East Pakistan (Essential Supplies) Ordinance, 1956, another Ordinance namely the East Pakistan Control of Essential Commodities Ordinance, 1956 was promulgated with the same purpose.

As under the Constitution of the Islamic Republic of Pakistan, these subjects namely trade and commerce within Province and production, manufacture, supply and distribution of goods have been included in the Provincial List except price control which is in the concurrent list and as these commodities are in short supply and their equitable distribution necessary, it is considered expedient in public interests to have some control over these commodities for sometime more. With this end in view the power should continue to be vested in the Provincial Government.

The Bill has been framed with these objects in view."

It may be recalled that at the time the Bill was in the Provincial Legislature for being enacted as an Act of the Provincial Legislature, there was prevailing a near famine conditions in East Pakistan and the Hon'ble Member-in-Charge of the Bill just through oversight forgot to mention in the Statement of Objects and Reasons the most important item, namely "food-stuffs" as an essential commodity which was very much in short supply and equitable distribution of foodstuffs was of prime necessity.

Though the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956), was enacted in 1956, this piece of legislation was not applicable to the Chittagong Hill-Tracts. Since Chittagong Hill-Tracts was a tribal area, no law enacted either by the Central or Provincial Legislature would apply there as there was a Constitutional bar which obstructed the application of the law automatically. Each and every law had to be applied there following certain legal procedures laid down in the Constitution itself. However, this impediment was removed in 1964 when the Constitution of 1962 was amended for the purpose. Only in 1970, the Government of East Pakistan thought it fit to apply the Act to the Chittagong Hill-Tracts and enacted the East Pakistan Control of Essential Commodities (Extension ^{to} the District of Chittagong Hill-Tracts) Ordinance, 1970 (E.P. Ord. I of 1970). Thus, the Act was also made applicable to the Chittagong Hill-Tracts and, thus, to the whole of the then East Pakistan now Bangladesh.

Before entering into discussion about the laws, that is,

Act, Ordinance, Orders, Rules, Regulations, etc., made or deemed to have been made before the emergence of independent and sovereign state of Bangladesh and their continuance in Bangladesh, it may be stated that the laws made in the British period and were in force or which could be brought into force were continued by virtue of the provisions of the Indian Independence Act, 1947 (IO & II Geo. 6, C.30). This legal position was discussed earlier. After the creation of Pakistan, two Constitutions, namely, the Constitution of 1956 and the Constitution of 1962, were made and the said Constitutions made specific provisions to continue the existing laws, that is, the laws which were in force or could be brought into force before such Constitutions came into force. During 1958 and 1959, Martial Law was proclaimed in Pakistan and some Martial Law instruments were issued under which the existing laws were allowed to continue in force. However, Bangladesh did not come into existence by peaceful means. The people of Bangladesh fought gallantly with the well-equipped and trained military junta of Pakistan for long nine months. At long last, the territories comprised East Pakistan emerged as an independent and sovereign state of Bangladesh.

The exile Government of Bangladesh at Mujibnagar made an Order on the 10th April, 1971, which was later published in Bangladesh in the Bangladesh Gazette Extraordinary, dated the 2nd May, 1972, Part I, as follows:-

²² "Laws Continuance Enforcement Order

I, Syed Nazrul Islam, the Vice-President and Acting

President of Bangladesh in exercise of the powers conferred

on me by the Proclamation of Independence, dated 10th day of April, 1971, do hereby order that all laws that were in force in Bangladesh on 25th March, 1971, shall subject to the Proclamation aforesaid continue to be so in force and such consequential changes as may be necessary on account of the creation of the sovereign independent state of Bangladesh formed by the will of the people of Bangladesh and that all Government officials - civil, military, judicial and diplomatic who take the oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service so long enjoyed by them and that all District Judges and District Magistrates, in the territory of Bangladesh and all diplomatic representatives elsewhere shall arrange to administer the oath of allegiance to all Government officials within their jurisdiction.

This Order shall be deemed to have come into effect from 26th day of March, 1971."

Thus it will be found that, by the above Order, all laws which were in force on the 25th March, 1971, were continued in force but laws made between 26th March, 1971 and the 16th December 1971, the day the Pakistan Generals surrendered to the Combined Force of Bangladesh and India and the day thenceforth celebrated as the Victory day, were not continued in force. It may be recalled here that on the night fall of the 25th March, 1971, the Pakistan military force perpetrated their brutalities over the innocent and innocuous people of the territories now comprising Bangladesh. The leader and President of the country was under

arrest by the Pakistani authorities and, as such, the laws
continuance Enforcement Order was issued by the Acting President.

Thus, all existing laws in the statute books have been
continued in force and they will remain so until they are repealed.

CHAPTER II

Orders relating to foodgrains and other foodstuffs

In the beginning, it has been stated that in September, 1939, on being satisfied with the information that His Majesty the King of England has declared war against Nazi Germany, the Governor General of India, by a Proclamation issued under sub-section (I) of section 102 of the Government of India Act, 1935, declared "that a grave emergency exists whereby the security of India is threatened by war." Simultaneously with the declaration of Proclamation of Emergency, the Defence of India Ordinance, 1939, and the Defence of India Rules made under the said Ordinance were promulgated. Subsequently, the Ordinance was converted into an Act of Parliament and the Defence of India Rules were saved by making a specific provision in the Defence of India Act, 1939. It may be noted that the Governor General of India, in exercise of the powers vested on him by the Constitution, unilaterally declared the Proclamation of Emergency without consulting any top leaders of the country. Thus, India became involved in the Second World War.

In December, 1941, Japan attacked Pearl Harbour situated in Honolulu in the State of Hawaii, a territory of the United States of America. At the beginning of the Second World War, United States was not involved in the War but when Japan attacked Pearl Harbour, the United States of America became involved in the War and the War spread out throughout the length and breadth of the World and, thus, it became known as

the Second World War. Nazi Germany headed by Adolf Hitler, Facist . . . Italy headed by ^{Benito} Mussolini and Japan headed by Emperor Hirohito and Prime Minister Tojo formed an alliance which was known as the Axis Forces and fought with the rest of the countries of the world involved in the war. The rest countries joined their hands together and were known as the Allied Forces. The three main countries, . . . besides other small countries, of the Allied Forces were Great Britain headed by its Prime Minister Sir Winston Churchill, Union of Soviets Socialist Republics, better known as Russia headed by the Secretary of the Central Committee of the Communist Party General Joseph Stalin and the United States of America headed by its President Franklin Delano Roosevelt. In the eastern front, Japan overran Singapore, Malaya (at present Malayasia) which were British colonies and when marched forward towards Burma which was also a British colony and occupied Rangoon, the British and allied soldiers retreated from those territories to Assam and Bengal, especially Bengal, and there was heavy pressure on Bengal due to influx of refugees from Burma ^{and} also ^{due to} heavy concentration of armed forces. The south-east Command Headquarters of Britain was shifted to Chittagong and all precautionary measures to combat enemy forces, especially war measures, were taken for efficient prosecution of war. All riverine transports, big or small, were requisitioned by the Government so that if the enemies penetrate into the riverine Bengal, they would not be able to cross the rivers. All foodgrains were

procured from the market so that the enemies would not get any food. Moreover, nature was most unkind and there was failure of crops and, as such, there broke out in Bengal a famine of unprecedented dimensions. This famine, known as 1350 Famine, of Bengal (1350 denotes the Bengali year), the parallel of which is still difficult to find, in which hundred and thousands of people died of starvation. The Provincial Government of Bengal estimated that about 15 lakh people died of starvation. A survey conducted on behalf of the Calcutta University fixed the figure at 35 lakhs. Foodstuffs were scarce and other necessary commodities of daily use were not available in the market. And, therefore, to cope with the situation, Rationing system, not only for foodstuffs but also for other necessities of life, had to be introduced. Words like ration, corruption, hoarding and black-marketing which were almost unknown to the common people and which were confined in the dictionary and arithmetic books, became known to the people at large with much bitter experience.

At that time, under the circumstances stated above, in the year 1943, the orders under the Defence of India Rules were made for foodstuffs and other essential commodities regarding equitable distribution and other incidental and supplementary matters. These orders were made by the Central Government and, as the exigencies arose, by the Provincial Government as well under the authority delegated to it under the Defence of India Act, 1939. When the Proclamation of Emergency was revoked and

the Defence of India Act, 1939 and the Defence of India Rules ceased to have effect, the legal history of those Orders which were made under the Defence of India rules and are in force till today or made subsequently under successive legislations enacted by different Governments at different times have clearly and as far as possible unambiguously been analysed in the earlier Chapter and does no longer require repetition. It may be stated here that to fight starvation and to ameliorate the conditions of the people of Bengal at large, especially of the cities and towns, the Government of Bengal created a department, namely, the Civil Supplies Department which was made responsible for the administration of the Orders including the making thereof.

At the beginning, there were many orders pertaining to foodstuffs and other related matters but as the time passed by, the number of orders became less and less. Many Orders were made and later rescinded or cancelled, but sometime after, similar Orders were again enacted either with or without modification. At present, the number of Orders are very few and many are not acted upon, that is, enforced though these are in force. This is because of the fact that food situation in the country has much improved and that too much restrictions on certain matters are neither necessary nor desirable. The Orders which are not enforced or acted upon may, perhaps, be weeded out from the statute book. Before entering into discussion on the existing orders, it may be pointed out that the above opinion is equally applicable to those Acts of Parliament which

are there in the statute books causing multiplicity of laws on the same subject or their non-applicability to Bangladesh by efflux time.

It will perhaps be not out of place to mention here that due to non-enforcement of the food laws, foodstuffs in abundant quantity are available now a days in the open market. For the last several years, may be 6 or 7 years, Bangladesh is not importing any rice as the production of rice has increased day by day and instead of one or, at best, two crops a year, now the agriculturists harvest three to four crops a year. The yeild is fairly high because of the use of high yeilding and improved varieties of seeds and with the scientific method of cultivation. The natural and chemical fertilizers are used for the cultivation of Paddy, wheat and other crops, be it food crops or cash crops. As a result, Bangladesh has achieved almost self sufficiency in its need of rice. However, there is a small deficiency of food (rice) and this deficiency is met by consumption of wheat. Wheat is now grown in Bangladesh and quite a large acerage of arable land is utilised for wheat cultivation. So the quantum of wheat production is quite high. Moreover, Bangladesh receives a good quantity of wheat as help from foreign Governments and agencies which help to meet the ^{food} needs of the country.

Now, in the backdrop of the circumstances stated above, the legislations affecting the private foodgrain stocks and movement of foodgrains may be taken up for discussion. These legislations are discussed below.

²³(a) The East Bengal Foodstuffs Price Control and Anti-Hoarding Order, 1953:

The East Bengal Foodstuffs Price Control and Anti-Hoarding Order, 1953, was made on the 8th August, 1953, by the Provincial Government of East Bengal in exercise of the powers under sub-section (I) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), delegated to the Provincial Government by the Central Government of Pakistan after cancelling the earlier Orders, namely, the East Bengal Foodgrains Anti-Hoarding Order, 1949, and the East Bengal Foodgrains Price Control Order, 1950. This Order is still in force by virtue of the several laws made successively and at present it shall be deemed to have been made and continued in force under the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). It may not be out of place to mention here that all foodstuffs Orders which are still in force shall be deemed to have been made under the aforesaid Act and shall continue in force until they are rescinded in exercise of the same powers under which they were made as has been enunciated in section 21 of the General Clauses Act, 1897 (X of 1897).

The word "foodstuff" has been defined to mean rice, rice in the husk (paddy), wheat and wheat products and shall include any other foodstuffs which the Government may notify from time to time. Under clause 3 of the said Order, the Government has power to fix maximum prices at which any foodstuff may be sold by a retailer, wholesaler or any other person. Clause 5 of the said Order provides that no trader shall carry on the business

of foodstuff except under a licence granted by the Government. The holding of private foodgrain stocks is prohibited under clause 7 of the said Order which clearly lays down that the Government may, by notification, direct that no family, retailer or wholesaler shall keep in its possession or control any foodstuff in excess of the quantity specified in the notification. The Government may further direct that no trader shall keep in his possession or control any foodstuff for any period longer than that specified in the notification. If any family, retailer or wholesaler had any excess quantity of any foodstuff, the head of the family, retailer or wholesaler, as the case may be, shall report the fact of excess quantity to the Government or any officer of Government and shall abide by the direction given to him by the Government or such officer regarding storage, distribution and disposal of the excess quantity of foodstuff.

Many notifications under clause 7 of the aforesaid Order were issued and the last such notification specifying the quantity and the period for which the foodstuffs could be kept under possession or control was issued on the 4th October, 1987 vide Notification No.S.R.O. 243-Law/87, dated 4th October, 1987. This Notification provided that -

- (i) No trader of foodstuffs shall, without a licence, keep in his possession or control foodstuffs in excess of 20 maunds;
- (ii) No wholesaler or retailer shall keep in his possession or control not more than 5000 and 250 maunds of rice or paddy, respectively;

- (iii) Except an importer, no trader of foodstuffs shall keep in his possession or control any foodstuff for a period of 20 days from the date of purchase and shall not keep it in one place for more than 7 days;
- (iv) No importer/^{of rice}shall, from the date of import, keep in his possession or control the rice so imported for a period longer than -
- (a) the whole of imported rice - 30 days
 - (b) 50% of the imported rice - 50 days
 - (c) 25% of the imported rice - 65 days
 - (d) Less than 25% of the imported
rice - 75 days
- (v) Every importer of rice shall report to the District Controller of Food about the stock and sale of the imported rice.

However, this last notification has been rescinded vide Notification No. S.R.O. 405-Law/89, dated the 3rd December, 1989 published in the Bangladesh Gazette, Extraordinary, dated 4th December, 1989. So, there is no impediment on the traders or businessmen of foodstuffs for keeping in his possession or control any quantity of foodstuffs for any period. The Government has lifted the impediment and now the businessmen are free to conduct their business in any manner they like. If they do not become too much unscrupulous, free and fair market economy will govern the trade practices. Moreover, as the food situation has improved in the country, the Government has not fixed the maximum selling price of foodstuffs as a result of which the price of

foodstuffs is determined according to the availability of the foodstuffs in the market.

Therefore, in view of the above, there is no efficacy of the East Bengal Foodstuffs Price Control and Anti-Hoarding Order, 1953 and there being no justification for its retention, this Order may be rescinded.

24(b) The East Bengal Essential Foodstuffs Anti-Hoarding Order, 1956.

The East Bengal Essential Foodstuffs Anti-Hoarding Order, 1956, was made by the Provincial Government of East Bengal in exercise of the powers under sub-section (I) of section 3 of the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 (Ord. X of 1955). This power of making order was delegated to the Provincial Government by the Central Government of Pakistan. Now, this Order shall be deemed to have been made under the provisions of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). This Order was made in supersession of the earlier order, namely, the Bengal Essential Foodstuffs Anti-Hoarding Order, 1944. So, it may be concluded that the original order of 1944 was made under Rule 8I of the Defence of India Rules made under section 2 of the Defence of India Act, 1939. It ^{has} remained in force by virtue of several enactments enacted from time to time which have been discussed earlier.

The Order defines the term "essential foodstuffs" to mean rice husked and in the husk, wheat, atta, flour, suji and sugar.

Paragraph 3 of the aforesaid Order prohibits bringing into the areas where the order is in force any foodstuffs by any mode of transport except under a permit. Paragraph 4 prohibits any person to have in his possession or control more than the normal quantity of essential foodstuffs (Normal quantity has been laid down in the Schedule to the Order). The other provisions are supplemental to the above provisions.

Now, that the Government has removed the restrictions imposed by it on all including traders and importers, there is no justification to retain this order in the statute book. This order may be rescinded under the provisions of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956).

²⁵(c) The East Bengal Foodgrains (Disposal and Acquisition) Order, 1948.

The East Bengal Foodgrains (Disposal and Acquisition) Order, 1948, has been made by the Government of East Bengal in exercise of the powers under sub-section (I) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), in supersession of the Bengal Foodgrains (Disposal and Acquisition) Order, 1947. The power to make this Order was delegated to the Provincial Government by the Central Government of Pakistan. Now, this order is still in force and shall be deemed to have been made under the provisions of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act II of 1956).

This order defines the word "foodgrains" which shall mean the rice husked, rice in the husk (paddy) and wheat and wheat products. The expression "Requiring Authority" has been defined to mean the District Magistrate, the Deputy Commissioner, the Subdivisional Officer, the Regional Controller of Food, the District Controller of Food and the Subdivisional Controller of Food, within their respective jurisdiction. Paragraph 3 of the aforesaid Order requires every person holding any stock of foodgrains shall sell the stock or such part of it as is not exempted under sub-paragraph (2) of that paragraph at the rate specified by the Government to the Requiring Authority or to any person specified by it. Not only the stock of foodgrains are to be sold at the rate fixed by the Government but also the person is duty bound to deliver the foodgrains at the place specified in the notice issued by the Requiring Authority. However, there is provision for an allowance in respect of rates on account of quality, transport or incidental charges. The other provisions are supplemental and incidental to this provision.

Now that the foodgrains are available in the open market and there is no restriction on the individuals and traders in general to hold stocks, there cannot be any justification in retaining this Order. This order may, therefore, be rescinded.

²⁶(d) The Bengal Rice Mills Control Order, 1943.

The Bengal Rice Mills Control Order, 1943, was made by the Governor of Bengal under rule 81 of the Defence of India Rules. The power to make orders was delegated to the Provincial Government by the Federal Government under the Defence of India Act, 1939.

This Order is still in force by virtue of the provisions of successive laws described earlier in Chapter I from the 20th December, 1943, and it has been amended on several occasions. It will be recalled that in the year 1943, when the great Bengal famine broke out in the Province of Bengal, the Government of Bengal took every possible measures to arrest the situation as best as they could take under the circumstances. As one of the measures, the Government of Bengal took stock as to the number of rice mills in the Province and the total capacity of milling. For that purpose, licencing was introduced so that the number and capacity of rice mills could be known and the Government can utilize their services for building up a stock of rice for supplying and distributing such rice to the hungry masses through rationing system and other methods. That being the background history of this piece of legislation, it will be seen that when the Order was at first made, no licence fee was charged. Only in later years this licence fee has been introduced.

The Bengal Rice Mills Control Order, 1943, shall now be deemed to have been made under the provisions of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956), and under section 3 of this Act, this Order can be amended and even rescinded.

Paragraph 3 of this Order requires every person to obtain a licence from the Government for carrying out the business of milling rice or of manufacturing rice products by power driven machinery. Paragraph 3A provides that Government will fix the

fees for licences and for the renewal thereof. Paragraph 4 lays down that licences will be granted in Form I set out in the Schedule to the Order. Paragraph 4A prohibits a licence holder of a rice mill to crush or milling any other foodgrain other than rice. Paragraph 4B provides that the licensee shall submit a report regarding the stocks of rice and the godowns where the rice or paddy are held in storage. Paragraph 5 lays down that contravention of any provisions of the Order is liable to punishment and the licence is liable to be cancelled. Under paragraph 6, every manager of a rice mill shall obey the orders of the Government with regard to the purchase, sale and distribution of rice husked or in the husk. Further, he shall give priority to Government requirement and comply with the directions given to him by the Government even though he may have a contract for milling rice with any person. Paragraph 7 makes provision that unless the owner or manager of a rice mill is licenced to receive paddy for husking from any other person, he shall not receive the paddy from that person. Moreover, the owner or manager shall not make delivery of the rice to any person unless that person holds a permit granted to him by the Government. And further, the owner or manager has been restricted to ~~make~~ the rice from the premises of the mill to any other place without a permit granted by the Government. Paragraph 7A lays down that where an agreement has been entered into between the licenceholder of a rice mill and the Government or its agent, the licence holder shall give top priority to the agreement and deliver the entire quantity of rice mentioned in the agreement.

within the stipulated period. The licence holders of mills are restricted under paragraph 7B to purchase stocks of paddy only from the area mentioned in their licence. The provisions of paragraph 8 give power to the Court trying an offence under this Order to pass a sentence according to law and, in addition, give power to order forfeiture of any property other than an article of food.

From the above, it will be seen that the Bengal Rice Mills Control Order, 1943, has surpassed its utility under the present circumstances. The restrictions or prohibitions imposed under the Order cannot now be allowed to continue as these restrictions or prohibitions are too grave in nature, and contrary to normal trade practices and also it hits the fundamental right of a citizen as enshrined in article 40 of the Constitution of the People's Republic of Bangladesh. Moreover, it provides against the provisions of the Contract Act, 1872, which, if allowed to be continued under the present circumstances, would be totally unjustified. When the country has almost attained self-sufficiency in food and all restrictions regarding stock of foodgrains ~~all restrictions regarding~~ have been done away with and the rationing system first introduced in the year 1943, the year when this Order was also made, has virtually collapsed, there is hardly any justification for retaining this order in the statute book. This order may, therefore, be rescinded under section 3 of the East Pakistan ^{Control of} Essential Commodities Act, 1956 (E.P. Act I of 1956).

27(e) The East Bengal Flour and Dal Mills and Chakkis Control Order, 1948.

The East Bengal Flour and Dal Mills and Chakkis Control Order, 1948, was made by the Provincial Government under subsection (I) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the powers delegated to it by the Government of Pakistan. At present this order shall be deemed to have been made under section 3 of the East Pakistan Control of Essential Commodities Act, 1956^{E.P.}/Act I of 1956).

The application of the order was very limited and it applied only to 13 municipalities including Dhaka Municipal Corporation.

It is learnt that Dal Mills have already been made out of purview of this Order, that is, the provisions are not applicable to Dal mills.

The word "miller" has been defined to mean a proprietor, director, managing agent of a mill who carries on the business of manufacturing wheat products (atta, flour, wholemeal atta, wholemeal flour, semolina(suji), bran, etc.) by the use of roller mills or chakkis, that is, by mills in which grinding is done by grooved steel or iron rollers or mill stones worked by mechanically transmitted power.

Paragraph 3 of the order prohibits a miller to sell or dispose of wheat product, except bran and refraction, manufactured in the mill without a permit or order in writing issued by the Director.

All millers are required to comply with every directions issued under paragraph 4 by the Director. The directions provide for fixation of extraction percentage of the different kinds of wheat products, the extent to which other grain may be mixed with wheat in the manufacture of wheat products, the percentage of different varieties of wheat to be used in the milling, etc. The millers are required to produce before the Director the accounts, registers and other documents relating to the milling, sale or purchase of wheat product. Contravention of any provisions of this order has been made punishable.

As the food situation in the country has immensely improved, the wheat can now be imported in the private sector importers and as the country also grows a fairly good quantity of wheat, the retention of this order in the statute book is no longer required. It hampers normal trade practices as well. Therefore, this order may be rescinded under the provisions of section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956).

²⁸(f) The East Bengal (Compulsory Levy of Foodgrains) Order, 1948.

²⁹(g) The East Pakistan (Procurement of Foodgrains in Border-belt) Order, 1965.

³⁰(h) The East Pakistan (Procurement of Foodgrains) Order, 1965.

The purpose of these orders are same and therefore, these are taken together for discussion.

The East Bengal (Compulsory Levy of Foodgrains) Order, 1948, was made by the Provincial Government under sub-section (I) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the power delegated to it by the Government of Pakistan. This Order shall now be deemed to have been made under the provisions of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). There is no indication of its cancellation though a similar order was made in 1949 and was specifically repealed. It can be assumed that this order has impliedly been rescinded.

The East Pakistan (Procurement of Foodgrains in Border-belt) Order, 1965, made in exercise of the powers conferred by sub-section (I) of section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). This order has, it is learnt, been rescinded and is not in force.

The other order, namely, the East Pakistan (Procurement of Foodgrains) Order, 1965, has been made by the Provincial Government under sub-section (I) of section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956).

The main purpose for which this order has been made is to procure excess Aman rice/paddy from the producers having more than 5 acres of land at a rate of 3 maunds of Aman paddy per acre for the excess area over 5 acres of cultivable land. The excess paddy has to be sold compulsorily to the Government at a price fixed by the Government.

It may be stated here that sub-paragraph (4) of paragraph 6 is hit by article 33 of the Constitution of the People's

Republic of Bangladesh which is an inalienable right given to a citizen of Bangladesh. However, the fact remains that, as I am told, this order is not at all enforced though the order still continues to be in force. The Government procures rice/paddy directly from the growers in the Aman harvesting season. Before the harvesting season begins, the Government fixes the target quantity which it will procure from the districts and, accordingly, the Government officials keeping the target quantity in mind begin purchasing rice or paddy.

As the situation exists, this order may be rescinded. It is not at all desirable that the orders which are not enforced should be continued in force and kept and maintained in the statute book.

³¹(i) The East Bengal Cordonning Order, 1947

³²(j) The East Pakistan Cordonning Order, 1958

³³(k) The Bangladesh Cordonning Order, 1974.

The main purpose of these orders being the same these are taken together for discussion.

The East Bengal Cordonning Order, 1947, was made by the Provincial Government in supersession of another order of the same year under sub-section (I) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), under powers delegated to it by the Government of Pakistan. This order should have been rescinded while making the East Pakistan Cordonning Order, 1958 as this order was superseded when the Bangladesh Cordonning Order, 1974 was made. However, this order

of 1947 shall be deemed to have been impliedly rescinded.

Both the East Pakistan Cordoning Order, 1958, since superseded, and the Bangladesh Cordoning Order, 1974, were made under the provisions of sub-section (I) of section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). It is learnt that this order is also not in force, that is, it must have been rescinded.

The above orders were made with a view to put restrictions on all persons to move the essential commodities, namely, rice husked and rice in the husk, that is to say, rice and paddy from one area specified in the order to any place outside that area without a permit granted by the officer/^{SO}specified in the order.

It will be seen that the orders were made when the food-grains were either in shortage or the country was in the grip of famine conditions. With the improvement in the food situation in the country, these orders have rightly been rescinded and, thus, there is no control of movement whatsoever of foodgrains in the country. The traders of foodgrains can now without any hindrance purchase any quantity of rice or paddy and move them to any place within country.

³⁴(1) The East Bengal Foodgrains (Movement Control) Order, 1949.

The East Bengal Foodgrains (Movement Control) Order, 1949, was made by the Provincial Government under sub-section (I) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), under powers delegated to it by the Government

of Pakistan. This order shall now be deemed to have been made under the provisions of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956).

This order prohibits or restricts but not absolutely the export of foodgrains, that is, wheat, paddy and rice from the then Province of East Bengal (in the present context Bangladesh). At the time when the order was made, the country was very much deficient in food and it had to import large quantities of foodgrains to feed the people. The impact of famine did not vanish altogether. The making of the order was very much necessary.

As has been stated above, the order does not bar absolutely the export of foodgrains, so it makes provision to the effect that persons who may be traders or businessmen may export foodgrains after obtaining a permit from the Director of Food. Permits may be obtained following a certain procedure laid down in the order. Procedure of export of foodgrains by rail, sea or otherwise than by rail or sea have also been provided in the order. The order also provides penalty for the contravention of the provisions of paragraph 3 of the order.

Though export of foodgrains was allowed, it was only on paper. Bangladesh was always on short supply and it had to import large quantities of foodgrains to feed its people. Only recently, the Government has allowed private businessmen to export fine quality of rice and also earmarked a good quantity of rice for export through private businessmen.

Though Bangladesh has not imported rice for about 6 years, yet it cannot be said that henceforth it will not require to

import rice and it will always produce a net surplus. Bangladesh is very much prone to natural calamities, such as, drought, flood, cyclone, tidal bore, etc. As these calamities very often visit the country, it will, perhaps, be unwise to suggest its rescission.

³⁵(m) The Bengal Rationing Order, 1943.

³⁶(n) The East Bengal Urban Area Rationing Regulations,
1956

The Modified Rationing Order, 1956

Falli O Paura Elaka Ration Adesh, 1988 (Village and
Municipal Areas Ration Order, 1988).

One of the most important step to combat the great Bengal famine of 1943 was the introduction of rationing system through the Bengal Rationing Order, 1943. This Order was made by the Government of Bengal in exercise of the powers under rule 8I of the Defence of India Rules, the power delegated to it by the Government of India under the Defence of India Act, 1939. However, the order exists by virtue of the successive legislations enacted from time to time. Now, this order shall be deemed to have been made under the provisions of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956).

The Bengal Rationing Order, 1943, when made was not applicable to East Bengal or, for that matter, East Pakistan now Bangladesh. When food situation in East Pakistan in 1956 became very accute, this order was made applicable only then and the East Bengal Urban Area Rationing Regulations, 1956 was made to introduce rationing system in the urban areas of East Pakistan.

The Regulations were applicable only to the cities of Dhaka and Chittagong and the town of Narayanganj. Later, the Regulations have been applied to the towns of Rajshahi, Khulna and Rangamati.

Now that the food situation has improved in the country and as the foodgrains supply in the market is quite good, the rationing system in these urban areas have collapsed and, as I learnt, these regulations are not enforced. So, it is suggested that the Bengal Rationing Order, 1943 may be rescinded and with the rescission of the order, the Regulations will die with the Order.

It may incidentally be mentioned here that the Modified Rationing Order, 1956, which was made for giving rations to the rural people living in the villages and also to the ~~in~~ towns people living within the municipalities, who were deprived of the benefit of rationing system in the urban areas under the East Bengal Urban Area Rationing Regulations, 1956, has been rescinded in 1988. Of course, the Government, in supersession of the Modified Rationing Order, 1956, made the Village and Municipal Areas Ration Order, 1988, but then again this order has also been rescinded in April, 1992.

Since rationing system has collapsed and the laws on the subject are not at all enforced, it is the private sector traders and businessmen who control the trading in foodgrains.

37(o) The East Bengal Rationing (Establishment)

Enquiry Order, 1949

38(p) The East Bengal Rationing Preparatory Enquiry
Order, 1949.

Both these orders were made under sub-section (I) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), after superseding earlier orders by the said name made in 1943. These orders have been made under the delegated power and these are still valid and in force by virtue of the provisions of section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). The East Bengal Rationing (Establishment) Enquiry Order, 1949 was made to ascertain the quantity of rations (rice, paddy, atta, flour, bran, suji, bread and sugar) required by the establishment owners. The other order, namely, the East Bengal Rationing Preparatory Enquiry Order, 1949 was made for making proper enquiry before issuing a ration document to an individual. Since the rationing system is no longer working, these complementary orders may also be rescinded.

39 ('q) The Guest Control Order, 1984.

This order was made in 1984 under section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). Such orders were made earlier in the years 1959, 1965 and 1978 and those have been rescinded. Though the main purpose of this order is to restrain the people to be extravagant and thirsty on the occasions of social, religious and marriage functions, yet the retention of the order is quite unjustified under the present circumstances when foodgrains are being traded in the open market and all restrictions on foodgrains have been removed. So, it is suggested that this order be also rescinded.

40. (r) The Emergency (Regulation of Rationed Articles and Internal Procurement of Rice and Paddy) Order, 1975.

A Proclamation of Emergency under article 141A of the Constitution of the People's Republic of Bangladesh was issued by the President on the 28th December, 1974, and, on that very day, the Emergency Powers Ordinance, 1974, was made and promulgated. Sub-section (4) of section I provided that the law will remain in force during the operation of the Proclamation of Emergency issued by the President on the 28th December, 1974. Later the Ordinance was converted into an Act of Parliament by the title the Emergency Powers Act, 1975. On the 3rd January, 1975, the Emergency Powers Rules, 1975 were made under section 2 of the Emergency Powers Ordinance, 1974. Under rule 17 of the Emergency Powers Rules, 1975, the Government made the Emergency (Regulation of Rationed Articles and internal Procurement of Rice and Paddy) Order, 1975. Amongst other provisions, paragraph 10 of this order prohibited taking out of any rationed article meaning thereby rice, paddy, wheat, etc. out of any rationed area by any person other than on Government account or by an appointed wholesaler or retailer. Paragraph 15 also prohibited any person from withholding or obstructing delivery of the stock of rice or paddy assessed on him under the Foodgrains (Disposal and Acquisition) Order, 1948 or under any other law for the time being in force.

However, the Proclamation of Emergency issued by the President under article 141A of the Constitution on the 28th

December, 1974, was revoked on the 27th November, 1979, and, thus, according to the provisions of sub-section (4) of section I of the Emergency Powers Act, 1975, the Act died its natural death and, along with the Act, the Emergency Powers Rules, 1975 and the Emergency (Regulation of Rationed Articles and Internal Procurement of Rice and Paddy) Order, 1975, do no longer remain in force.

Besides the Orders discussed above seriatim, there are a few other orders which are though not to the point yet they deserve mentioning. These orders cover other necessities of daily life, such as, mustard oil, salt, sugar, etc., and most of these orders have been made to mitigate the sufferings of the people in general but to the detriment of the unscrupulous traders who generally reap huge profits at the cost of the common people by creating artificial shortage or scarcity of the essential commodities.

Under section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956), the Provincial Government made the following orders to ease the situation, fix the maximum price at which the articles are to be sold and purchased and for ensuring equitable distribution of the essential commodities, namely:-

⁴¹(s) The East Pakistan Mustard Oil Seeds and Oil
Distribution Order, 1957.

⁴²(t) The East Pakistan Salt (Import and Distribution)
Order, 1958.

- 43(u) The East Pakistan Sugarcane Prices Control Order, 1962, was made under sub-section (I) of section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956) in order to save the poor sugarcane agriculturists from the clutches of the traders and the owners or persons-in-charge of the sugar factories.
- 44(v) The East Pakistan Gur, Sugar and Sugar Products (Manufacture and Movements) Control Order, 1956, was made by the Provincial Government under section 3 of the (Essential Supplies) Ordinance, 1956 (E.P.Ord. VI of 1956), which shall now be deemed to have been made under the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). It made provisions prohibiting production of gur for a certain period in a year and also prohibited the sugar factories to produce certain types of sugar if the Government believes that that type of sugar will affect adversely^e the supply of sugar in the market. It also prohibited movement of sugar from any place in a zone to another place situated at a different zone. The owners of sugar factories were forced to purchase sugarcane from a sugarcane grower of the zone in which the factory is situated. Contravention of the provisions have been made punishable.
- 45(w) The Sugar and Sugar Products Control Order, 1948.

This Order was made by the Government of Pakistan under sections 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), after superseding the Sugar and Sugar Products Control Order, 1947, dated the 4th August, 1947, issued by the Department of Food, Government of India, New Delhi. At present, this Order shall be deemed to have been made under section 3 of the ~~East~~ East Pakistan Control of Essential Commodities Act, 1956. The Order provides that the producer is required to make delivery of sugar to a recognised dealer or a person authorised by the Controller. The Controller can prohibit a producer to produce sugar of a certain variety. Every producer is required to comply with the directions of the Controller regarding production, sale, stocks and/or distribution of sugar and sugar products. The Controller has the power to fix the maximum price of sugar and selling or purchasing of sugar exceeding the maximum price has been prohibited. The Controller has the power to allot quota of sugar to a province or area or market. Transportation of sugar without a permit has been prohibited. Contravention of the provisions has been made punishable. This order is almost a duplicate of the East Pakistan Sugar and Sugar Products (Manufacture and Movements) Control Order, 1956 and, furthermore, there ^{are} certain provisions which were made in the context of Pakistan and under the present context the provisions are not ~~opposite~~. This order may be rescinded.

Some of the orders which are rescinded by implication and some others which are stated to ~~be~~ be rescinded, may be rescinded ~~by~~ to set at rest all legal controversies in the future. The rescissions will help in removing all doubts and confusions and weed out all unnecessary laws from the statute book.

CHAPTER III

Acts relating to foodgrains and other foodstuffs

Whichever laws are the source for making all Orders relating to foodgrains and other foodstuffs from the year 1943 till the enactment of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956), and still continue to be in force, the aforesaid Act shall be deemed to be the source for making all those orders. The history of all such legislations have been traced in Chapter I and there it has amply been explained when and under what circumstances this Act was enacted by the Provincial Legislature of East Pakistan.

When a calamity befalls on a country, it is presumed to be a temporary phenomenon and soon it will be over. The Second World War broke out and ended but its after-effect did not, as expected, die down till today. During the War, to meet the situation then prevailing, the Government enacted as the exigencies arose various legislations as a temporary measure, but then, under compelling circumstances, certain temporary legislations had to be continued. One such example is the enactment of the Essential Supplies (Temporary Powers) Act, 1946. Not only the short title indicated that the Act was a temporary one but, at the same time, it made indirectly a provision regarding its duration. It provided that the Act would expire after a period of about 6 years at the most after the revocation of the Proclamation of Emergency proclaimed by the Governor General of India under section 102 of the Government of India Act, 1935. However, it has been explained how the provisions of this temporary Act and the subordinate

legislations made during the Proclamation of Emergency continued year after year. At long last, this temporary legal measure became a permanent enactment titled the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956).

While this Act was being enacted, the Member in charge stated in the Statement of Objects and Reasons appended to the Bill (See Annexure 20) that "as these commodities are in short supply and their equitable distribution necessary, it is considered expedient in public interests to have some control over these commodities for sometime more". (The word "commodities" will mean the essential commodities as defined in the Act.) So, from this Statement, it becomes clear that at the time of enacting the Act, the Government contemplated that the Act should be continued for a limited time yet this contemplation has not been reflected in the provisions of the Act. As the time limit was not fixed, this Act continued ever since it was enacted,

From the long title and preamble of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956), it will be seen that the Act has been enacted with a view to provide for powers to control the production, treatment, keeping, storage, movement, transport, supply, distribution, acquisition, use or consumption of, and trade and commerce in, essential commodities within East Pakistan now Bangladesh. Essential Commodity has been defined in section 2 of the Act to mean, amongst many other commodities, foodstuffs which term includes foodgrains, edible oilseeds and oils. Furthermore, the Government has taken the power to declare by notification any other commodities to be an essential commodity.

The most important provision of this Act is section 3 which gives powers to the Government to make orders to provide for all those matters set forth in the preamble. Whenever the Government feels it necessary or expedient for maintaining, or increasing supplies of any essential commodity or for securing its equitable distribution and availability at fair prices, it can make an order for achieving the purposes aforesaid. An order made under this provision may provide, amongst other things, for -

- (a) regulating by licences, permits or otherwise the production or manufacture of any essential commodity;
- (b) controlling the prices at which any essential commodity may be bought or sold;
- (c) regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;
- (d) prohibiting the withholding from sale of any essential commodity kept for sale;
- (e) requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order;
- (f) regulating or prohibiting any class of commercial or financial transaction relating to foodstuffs which, if unregulated, will be detrimental to public interest;
- (g) requiring persons engaged in the production, supply or distribution of, and trade or commerce in, any essential

commodity to maintain and produce for inspection such books, accounts and records relating to their business and furnish such information relating thereto, as may be specified in the order,

According to the saving provisions of the successive enactments read with the provisions of section 24 of the General Clauses Act, 1897 (X of 1897), and in pursuance of these provisions, the earlier orders made under various enactments have been continued and some other orders have been made either by rescinding the earlier orders or making a new. The orders made or deemed to have been made under the said Act have been given much more importance by incorporating a provision in the Act to the effect that the provisions of the orders will prevail over the provisions of other Acts even though the orders may contain any provision which may be inconsistent therewith. Thus the orders have been made supreme over other Acts. The other provisions of the said Act are either supplemental or incidental to the provisions of section 3.

Now the question arises as to how long this Act should be continued. When the Bill was introduced in the Provincial Legislature for enactment of the Act, it was stated categorically that as the essential commodities were in short supply so it was necessary in the public interest to continue with the control of these commodities for sometime more. As will be seen, section 2 defines as many as 23 items of essential commodities, sometimes in groups, for example, foodstuffs which include not only foodgrains and other foodstuffs but also edible oilseeds and

oils as well, and many orders were made in the past but those have been rescinded as the situation improved in respect of those commodities. At present, orders are restricted only with respect to foodstuffs, especially foodgrains.

As discussed earlier in the previous Chapter, the rationing system has virtually collapsed as only the orders relating to rationing system are in the statute book without being implemented or enforced and the Government has withdrawn all restrictions or impediments regarding trade and commerce in foodgrains within Bangladesh. This is so because of the fact that Bangladesh has almost become self-sufficient in food and foodgrains are available in the open market. Since all legal impediments and restrictions for trade and commerce within Bangladesh have been removed, the question of continuance of the enactment any longer is a very complex and, at the same time, pertinent one. One view will be that, under the present circumstances, the Act be repealed. The other view will be contrary to the first one. As has been stated earlier, since Bangladesh is situated in the monsoon region and the monsoon is very much unpredictable inasmuch as the calamities like drought, flood, tidal bore, cyclone, etc., is a common occurrence and the production of foodgrains is not static, the repealing of the Act is out of question because to meet a situation created under such conditions, the Government must have some control in respect of **foodstuff** to overcome the situation. Moreover, the unscrupulous traders and businessmen, if they get an opportunity, they will create an artificial scarcity of foodgrains in the market and the miseries and sufferings of the people at large will know no bounds. Those who have studied the

characters of the traders and businessmen of this country they will, with one voice, object to the repeal of the Act.

However, it may be suggested that, at present, the Act may not be repealed but all the orders which are in force and in the statute book may be rescinded. The Act will act as a great deterrent and so long the traders and businessmen of foodgrains behave properly and continue their trade with the normal trade practices, there will be no impediment or obstruction in their trade practices as at present when all impediments on foodgrains trade have been removed. Sometime after, there will be no utility of this Act and naturally this Act will be weeded out from the statute book.

But if the traders and businessmen do not follow the normal trade practices and the Government feels it necessary to impose restrictions, the Government will be able to put an embargo on free trade and commerce in respect of foodgrains. The traders and businessmen will then be in a precariously disadvantageous position for which they themselves are to be blamed.

The other enactments on the subject hindering or creating impediments in the way to privatisation of foodgrains trade are now being discussed seriatim.

⁴⁶The Hoarding and Black Market Act, 1948 (XXIX of 1948), is an Act of Parliament enacted by the Central Legislature of Pakistan. This Act, being an "existing law" within the meaning of article 152 of the Constitution of Bangladesh, is still in force and applies to Bangladesh.

From the preamble of the Act, it can be ascertained that the purpose or object for which the Act has been enacted. The preamble lays down that the Act has been enacted with the objectives of making provisions for checking hoarding and dealing in the black market.

The expression "dealing in the black market" occurring in clause (2) of section 2 of the Act has a wide connotation. In short, the expression has been defined to mean that in contravention of any law selling, distributing, supplying, acquiring or disposing of, foodstuffs, or stocking, withholding from sale or selling or buying anything (which will include foodgrains as well) for purposes of trade at a price greater than the maximum price fixed by or under any law will constitute dealing in black market.

The word "hoarding" occurring in clause (3) of section 2 has been defined to mean stocking or storing of anything in excess of the maximum quantity of that thing allowed to be held in stock or storage any one time by any person (which word can be interpreted as traders as well) by or under any law for the time being in force.

These matters are directly related to laws regulating rationing system introduced during the famine in 1943. Since laws made in respect of all other essential commodities, except foodstuff, are no longer in existence, the provisions of this Act are now applicable only to foodstuff. Since, the rationing system is no longer in existence and the impediments regarding holding of stocks and price control are no longer in force, the Act has

lost all its effectiveness and, therefore, it may be repealed.

Incidentally it may be stated here that the then Provincial Government of East Bengal enacted an Act, namely, ^{46(I)}the Essential Articles (Price Control and Anti-Hoarding) Act, 1953 (E.B. Act XXII of 1953), after repealing the Essential Articles (Price Control and Anti-Hoarding) Ordinance, 1953 (E.B.Ord.VII of 1953). This law defined "essential article" as articles other than essential commodities as defined in the East Pakistan Control of Essential Commodities Act, 1956 (E.P.Act I of 1956). Thus, the law does not apply to foodstuffs or, for that matter, foodgrains. It is doubtful if this Act has ever been enforced. However, it seems its existence will be a duplication of the East Pakistan Control of Essential Commodities Act, 1956 and, as such, it may be repealed. Even otherwise, there does not ^{seem} to be necessary to retain this enactment in the statute book.

⁴⁷The Food (Special Courts) Act, 1956 (E.P.Act X of 1956), was enacted by the Provincial Legislature of East Pakistan after repealing the East Pakistan Food (Special Courts) Ordinance, 1956 (E.P.Ord. XV of 1956). The enactment of this law was necessiated to prevent the contravention of the orders relating to foodstuffs ^{a, foodstuffs} ~~became~~ scarce at that time. The Magistrates trying an offence under the Act were given higher powers for inflicting punishment. As at present, most of the orders are not being enforced, all restrictions on foodgrains trade have been removed and as the ordinary Magistrates have got the enhanced power of punishment, so it has lost all its efficacy and it may be repealed.

⁴⁸The East Pakistan Warehouses Ordinance, 1959 (E.P.Ord. LXVI of 1959), was made and promulgated by the Provincial

Government to provide for the regulation of warehouses for storing agricultural produce. Agricultural produce has been defined to mean, amongst other crops, paddy and rice. It is a law which is mainly aimed at casting an obligation on the warehouseman to protect and preserve agricultural produce stored in his custody. It is for this purpose, the warehouseman has to take out a licence and according to the provisions of the Ordinance and the conditions of licence he is authorized to carry on his warehousing business.

⁴⁹The East Pakistan Agricultural Produce Markets Regulation Act, 1964 (L.P. Act IX of 1964), was enacted by the Provincial Legislature of East Pakistan to provide for the regulation of the purchase and sale of agricultural produce and of markets in which such produce is purchased and sold in East Pakistan now Bangladesh. The expression "agricultural produce" has been defined in the Act to mean, amongst many produces of agriculture, horticulture, arboriculture and animal husbandry, rice and paddy. The Act gives more emphasis on the regulation of markets than on agricultural produce. The Act is applicable only to the markets notified by the Government under section 3 of the Act. The Act provides for constitution of a Market Advisory Committee which has been given the functions of regulating the market practices, fixing of market charges realised by the market functionaries, making arrangements for settlement of disputes between purchasers and sellers, maintaining a set of standard weight and measures, etc. Provisions have been made for licensing of market functionaries for operating in a notified market in accordance with the

provisions of the Act, rules and the conditions of licence.

The Director of Agricultural Marketing has power to fix the market charges payable by the purchasers or sellers to various market functionaries in connection with the purchase or sale of different kinds of agricultural produce in a notified market. No market charge in excess of the amount fixed by the Director shall be paid or received by any person in respect of any transaction. Making or receiving of any trade allowance, other than an allowance allowed by the rules, is prohibited. The Market Advisory Committee shall try to settle amicably any dispute whatsoever arising between a seller and a purchaser or, failing that, the Committee shall arbitrate on that dispute. The market functionaries are under legal obligation to furnish information in regard to any transaction of an agricultural produce of the market where they operate and to produce any document relating to price, supply position, stock position, movement and marketing cost of such produce. Contravention of such of the provisions as are specified in the Act have been made punishable.

This Act provides for creating normal trade practices and also, at the same time, helps the Government to ascertain the price, supply position, stock position and movement of foodgrains and, with the statistics readily available at hand, it may take such appropriate actions as it deems fit and proper.

⁵⁰The Foodgrains Supply (Prevention of Prejudicial Activity) Ordinance, 1979 (Ord. XXVI of 1979), was made and promulgated at a time when due to strike of the road transport workers

the movement, transshipment, supply and distribution of foodgrains were hampered and the price of foodgrains rose sharply in some places and as a result of which the people in general were facing great hardship in getting foodgrains due to scarcity and high price. So, Government had to take resort to make this penal law so as to make sure that supply, movement, transshipment and distribution of foodgrains could be made unhampered and, thus, to mitigate the sufferings of the people at large,

Under section 3 of the Ordinance, a person is liable to be imprisoned if he is found to be guilty of a prejudicial act. A prejudicial act is stated to be an activity which is contrary to, or against, storage, movement, transshipment, supply and distribution of foodgrains.

The Government was compelled to make and promulgate this Ordinance under certain circumstances to meet the exigencies arising out of the strike of the road transport workers. However, this Ordinance was not converted into ^{an} Act of Parliament and, as such, it ceased to have effect according to the provisions of clause (2) of article 93 of the Constitution of the People's Republic of Bangladesh.

Besides the Acts of Parliament mentioned above relating to foodgrains, there are other enactments which are in the statute books and are still in force by virtue of the successive constitutional provisions and the Laws Continuance Enforcement Order of 1971 and are relatable to other foodgrains. A list of those laws with a short note is given below for record.

⁵¹The Sugar-cane Act, 1934 (XV of 1934).

The Sugar-cane Act, 1934 (XV of 1934), was enacted by the then Federal Government of India for the purpose of assuring to sugar-cane growers a fair price for their produce, to regulate the price at which sugar-cane intended to be used in the manufacture of sugar may be purchased by or factories.

However, since its enactment, except section I, . none of the sections have been brought into force. So retaining of this enactment is a burden on the statute book. The Act may be repealed also because there are other laws on the subject which are in force.

⁵²The Agricultural Produce (Grading and Marking) Act, 1937 (I of 1937), was enacted by the then Federal Government of India to provide for grading and marking of agricultural and other produce. This enactment covers foodstuffs, such as, fruits, vegetables, eggs, dairy produce, coffee and other spices but does not cover cereals like wheat, paddy and rice. The grading and marking is done by making rules under the Act.

⁵³The Agricultural Produce Cess Act, 1940 (XXVII of 1940), was enacted by the then Federal Government of India to provide for setting up and financing a Committee for promoting scientific, technological, social and economic research and education relating to food, agriculture, animal husbandry and fisheries. The main purpose of this Act is to finance a committee for conducting research relating to food, agriculture, animal husbandry and

fisheries, and, for this purpose, a cess was imposed on the agricultural produce mentioned in the Schedule which are exported out of Bangladesh. A cess is an impost or tax but this tax is being imposed as customs duty at the rate of one-half of one percent ad valorem on all exports of the scheduled agricultural produce. The agricultural produce, amongst many other items, include wheat and wheat flour as well.

It is a very old statute and it is doubtful if the Committee under the Act is still in existence and functioning. However, in course of time there have been established many research institutes on agricultural produce, animal husbandry and fisheries. Moreover, it is not known if the customs duty is still charged on the scheduled agricultural produce or not or if it is levied and collected to which authority such cess is paid. So it seems that the Act has lost its utility or usefulness and, therefore, it may be repealed.

⁵⁴The Coconut Committee Act, 1944 (X of 1944), was enacted by the then Federal Government of India for the purpose of financing a committee for the improvement and development of the cultivation, marketing and utilization of coconuts. The Committee referred to in this Act is the same Committee set up under the Agricultural Produce Cess Act, 1940. It is very doubtful if the Committee exists now a days. However, the Act provides to levy a cess in the form of excise duty on all copra consumed in any mill in Bangladesh at a rate specified in the Act. If the Committee does not exist, continuance of the Act is totally

unjustified and, in that case, it may be repealed.

⁵⁵The Oilseeds Committee Act, 1946 (IX of 1946), was enacted by the then Federal Government of India to provide for financing a Committee for the improvement and development of the cultivation and marketing of oilseeds and of the production, manufacture and marketing of oilseed products. Under the Act, a cess in the form of excise duty is levied on all oils extracted from oilseeds crushed in any mill in Bangladesh, whether the oilseeds are produced in, or imported from outside, Bangladesh at the rate specified in the Act and also a cess in the form of customs duty is levied on all oilseeds exported out of Bangladesh at a rate fixed by the Act. The proceeds of the cess, after deduction of collection and recovery, are to be paid to the Committee constituted under the Agricultural Produce Cess Act, 1940. The Committee has been given several functions which are enumerated in the Act. It is not known if any Committee by the name of Bangladesh Food and Agriculture Committee has been set up under the Agricultural Produce Cess Act, 1940 and it is still continuing in force. However, if there is no such Committee, the continuance of the collection of excise duty and customs duty is totally unjustified. Such impost can be collected under the relevant laws. The purpose for which this Act was enacted has become frustrated and, therefore, under the changed circumstances, the Act may be repealed.

⁵⁶The East Pakistan Pure Food Ordinance, 1959 (E.P.Ord. LXVIII of 1959), has been enacted by the Government of East

Pakistan to provide for the better control of the manufacture and sale of food for human consumption. This Ordinance repealed the Bengal Food Adulteration Act, 1919 and the Assam Pure Food Act, 1932.

The main object of this Act is to prevent adulteration of food and other manufactured food products and the trading thereof so that the people can enjoy wholesome food. Provisions have been made for maintaining standard of purity of the food. Punishment has been provided for contravention of the provisions of the Act.

⁵⁷The East Pakistan Sugar (Road Development Cess) Ordinance, 1960 (E.P.Ord. XXIII of 1960), has been made and promulgated by the Government of East Pakistan to levy a cess on sugarcane while it is being sold to the Sugar Mill and purchased by the Sugar Mill at the rate specified in the Ordinance and the money thus collected is to be used for the development and maintenance of roads in the sugarcane growing areas.

⁵⁸The Inter-Provincial Trade Ordinance, 1964 (Ord.IV of 1964), was made and promulgated by the Central Government of Pakistan. It was made for regulating the movement and transport of commodity or class or description of commodities, including imported commodities, between the Provinces. Since Bangladesh has won freedom, this law has become redundant and it may be repealed.

⁵⁹The Cantonments Pure Food Act, 1966 (XVI of 1966), was enacted by the Central Legislature of Pakistan for the prevention of adulteration of food in cantonments. The application of this

Act is limited to cantonments only. Since a law on the same subject exists, that is, the East Pakistan Pure Food Ordinance, 1959, and as this Ordinance applies to the whole of Bangladesh which means in the cantonments as well, there does not seem to be necessary to maintain two laws on the same subject. Therefore, this Act may be repealed. While repealing this Act, the East Pakistan Pure Food Ordinance, 1959, may be examined if it needs any amendment.

⁶⁰The Import of Goods (Price Equalisation Surcharge) Act, 1967 (III of 1967), was enacted by the Central Legislature of Pakistan for the purpose of levying an additional duty for equalisation of prices of certain goods imported at different prices under different conditions and from different countries. This Act applies, amongst other goods, in respect of edible oil as well.

It may be worth-while to mention here that just after the emergence of Bangladesh, a Presidential Order, namely, ⁶¹the Bangladesh Scheduled Offences (Special Tribunals) Order, 1972 (P.O. 50 of 1972), was made to curb offences, amongst others, dealing in the black market, hoarding and profiteering in food-grains and other foodstuffs. However, this Order stands repealed.

This treatise will be incomplete if a word or two is not said about another kind of laws which this poor and unfortunate country had to suffer in the past. These laws were proclaimed or issued by the Martial Law Administrators. In 1958, Martial Law was proclaimed for the first time in Pakistan. Since the Martial

Law Regulations issued during the years 1958-1962 are not readily available, it is not possible to say if any Martial Law Regulation or Martial Law Order was issued relating to foodstuffs. However, no Martial Law Regulations or orders are now in existence as will be seen from the extract of ⁶²Article 225 of the 1962 Constitution of Pakistan. Another Martial Law was proclaimed in 1969 and while this Martial Law was in force, Bangladesh emerged as a sovereign independent state.

After Bangladesh came into being, again on the 15th August, 1975, Martial Law was proclaimed in Bangladesh and this Martial Law ⁶³was withdrawn on the 6th April, 1979 at 8 p.m. While withdrawing the Martial Law, all Martial Law Proclamations were revoked and all Martial Law Regulations and Martial Law Orders were repealed. Thus, no Martial Law Regulation or Martial Law Order is in existence even if any such Regulation or Order made ~~under~~ any provision regarding foodgrains or, for that matter, any foodstuff.

Yet again, another Martial Law was imposed in Bangladesh on the 24th March, 1982. One Martial Law Regulation was made directly affecting trade in foodgrains and another Martial Law Order was made indirectly affecting foodgrains. ⁶⁴Paragraph 21 of Martial Law Regulation No.1 of 1982, dated 24th March, 1982 made provisions regarding hoarding, profiteering and dealing in black market of foodgrains. The definitions of the terms were adopted from the Hoarding and Black Market Act, 1948. ^{64(I)}The Martial Law Order No.97, dated 12th May, 1985, incorporates in a summary way the provisions of the East Bengal Price Control and Anti-

Hoarding Order, 1953 in regard to the fixing of the maximum price of any commodity which include foodgrains. However, the Martial Law proclaimed on the 24th March, 1982 was revoked by another 64(2) Proclamation dated the 10th November, 1986 and the Martial Law was withdrawn. In paragraph 2 of the said Proclamation, it has been laid down that all Proclamations Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders and Martial Law Instructions made in pursuance of the Proclamation of the 24th March, 1982 are hereby repealed. Thus, it will be seen that no Martial Law Regulations and Orders made during the years 1982-1986 Martial Law period are no longer in force.

CHAPTER IV

MISCELLANEOUS

Legislations affecting Private foodgrains trade

At the outset of this review, the history of all legislations relating to foodstuffs, which term includes foodgrains as well, have thoroughly and clearly been discussed in the previous Chapter. The time at which, and the circumstances under which, these legislations were enacted have been analysed properly. Also, under what circumstances and under what legal authority, the subordinate legislations were made or deemed to have been made have been explained in the earlier Chapters.

However, it may again be stated that in the past, beginning from the year 1943, many orders were made under the Defence of India Rules, and then under different enactments and many of these orders have been rescinded and some were rescinded but re-made with or without modifications, Only a few of the orders are, at present, in force and though some of these orders are in force yet these are not enforced by the Government machinery. Thus, the orders which are not enforced seem to be superfluous and may be rescinded and weeded out from the statute book.

While discussing the Acts, Ordinances and the Orders relating to foodstuffs (foodgrains), I have, in my humble way, tried to summarize the history and source of each legislation, and have also indicated what legal entitle or entity promulgated it. All legislations referred to in this review have been attached at the end of this treatise.

At present there is only one Act of Parliament, that is,

the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956), which controls indirectly the entire food-grains trading in the private sector. This Act acts as the stumbling block in the privatisation of foodgrain trade in Bangladesh. The time at which, the circumstances under which, and the purpose for which, this Act was enacted have thoroughly been discussed in the earlier Chapters. However, it is suffice to say that this is the source of all orders relating to food-grains now in force in Bangladesh because in pursuance of the provisions of section 3 of this Act, all existing orders have been made or deemed to have been made and are being continued in force. The orders will remain in force until they are rescinded under the same provisions they were made or deemed to have been made as enunciated in section 21 of the General Clauses Act, 1897 (X of 1897), which may be quoted below:-

"21. Power to make, to include power to add to, amend, vary, rescind, orders, rules or bye-laws.- Where, by any Act of Parliament or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

From the above enunciation, it is clear that a simple notification will be necessary to rescind the Orders that are in force. Of course, such a notification will have to be issued by the Government.

However, for the repeal of the above Act, a Bill has to be introduced in Parliament and if, it is passed by Parliament and becomes an Act of Parliament, only then, there will be absolutely no impediment of any kind for the traders to carry out their business freely without any legal hindrance or impediment. To remove the legal impediment for the foodgrains traders, the ^{whole} Act does not require to be repealed but a simple amendment in section 2 of the Act will achieve the purpose if the word "foodstuff" is omitted from the definition of "essential commodity". Perhaps, such a situation is not far off, when the Act will either be amended or repealed and the orders made thereunder relating to foodgrains will be no more in force and will be weeded out from the statute book only if, as the situation obtaining now, the traders and businessmen of foodgrains carry on their business scrupulously and normally.

Leaving the wistful thinking, let me discuss the present day legal position obtaining in the country with respect to trade in foodgrains.

Procurement of Foodgrains - Cordoning System - Past and Present Position.

The Government made orders for compulsory levy of foodgrains. But with the improvement of the food situation in the country as a whole, the present order, namely, the East Pakistan (Procurement of Foodgrains) Order, 1965 which is still in force but is not at all enforced. The Government, along with other traders, purchase rice/paddy from the growers/agriculturists and also from the Rice Millers. The Government has framed a set of

principles in 1991 and makes the purchase according to the procedures laid down therein. At the beginning of the harvesting season, the Government fixes the quantity of rice/paddy to be procured from the growers/agriculturists of each district according to the specification and at a price fixed by it. In the past, when foodgrains was scarce and rationing system was in full swing, the Government used to collect rice/paddy compulsorily from the growers and the growers had no other alternative but to sell rice/paddy to the Government the quantity of rice/paddy, and at the price, fixed by it. But today the position is quite reverse. There is no compulsion on the farmers and the procurement of rice/paddy by Government is voluntary. The farmers have the choice either to sell or to withhold from sale their foodgrains.

The Government voluntarily purchases the foodgrains from the farmers with a view to bring stability in the market rate of foodgrains in the market and to give incentive and encouragement to the farmers to grow more food.

In the past, only Aman variety (the paddy that is harvested during winter) of rice/paddy were procured but now a days all varieties of rice/paddy, that is, irri, boro, Aus including Aman, are procured on voluntary basis though the quantum of rice/paddy to be procured and the price at which such rice/paddy is to be procured, is settled before hand. It may be mentioned here that it is reported in the newspapers that the quantum of rice/paddy, ^{fixed for procurement} is not compatible with the production and as a result of which the poor farmers suffer because the price the Government pays is more than the traders pay to the farmers.

In this connection, it may be stated that in the past, the Government made cordoning orders. The first such order was made in 1947 and the last was made in 1974. These orders were made prohibiting any person to remove rice, paddy and rice products (being muri, chira, or rice flour) from an area specified in the order to any other place outside that area. However, all these orders are not in force and, as a result, there is no restriction of movement of rice, paddy or rice products from one place to another within Bangladesh.

Stocking or storage of Foodgrains

While discussing about the East Bengal Foodstuffs Anti-Hoarding Order, 1953, which is the most pertinent law in the matter of trading in foodgrains, it has been observed that the last hurdle for stocking or storage of foodgrains by the traders - retailers, wholesalers and importers - have been removed by the Government. The restriction regarding the quantum and the number of days for which the foodgrains could be stocked or stored in one place imposed in exercise of the powers conferred by paragraph 7 of the aforesaid Order by a Notification No.S.R.O.243-Law/87, dated the 4th October, 1987 (published in the Bangladesh Gazette, Extraordinary of the same date), has been rescinded in exercise of the same powers by Notification No.S.R.O.405-Law/89, dated the 3rd December, 1989 (published in the Bangladesh Gazette, Extraordinary of the 4th December, 1989). Thus, with the rescission of the notification imposing some legal obstructions, there is now, at present, no legal impediments on the retailers, wholesalers and importers of foodgrains to stock or store foodgrains. They are under no legal obligation and they are free to

store or stock foodgrains as much as they can afford to. If these traders of foodgrains do not do anything in excess, that is, if they are not engaged in hoarding, dealing in the black market or creating artificial scarcity in the availability of foodgrains, surely the Government will consider the next step to be taken with regard to the aforesaid Order and that next step will be to rescind the order.

The other two orders, namely, the East Bengal Essential Foodstuffs Anti-Hoarding Order, 1956 and the East Bengal Foodgrains (Disposal and Acquisition) Order, 1948 are, no doubt, exists in the statute book but without being enforced and, as such, these orders will not, it seems, hinder trading in foodgrains. However these orders, being contrary to Government policy on private trade on foodgrains, need to be rescinded otherwise the policy of the Government will be frustrated.

So also, the Government has not lifted the legal impediments it imposed under the Bengal Rice Mills Control Order, 1943. Only exception is that, in the past, milling of paddy supplied by Government and supply of rice milled by the Mill authorities were compulsory but, at present, it is not so. The compulsion is not there. The Government enters into an agreement with the owner or Manager of the rice mill and supplies paddy and, in return, the millers are expected to supply rice to the Government at the stipulated time and at the ratio and specifications agreed upon. Since there is no bar for storage of foodgrains, it can stock foodgrains inasmuch as it can in its godowns. Only the Miller has to send a fortnightly report to the Government about its

stock. In order to liberalise and to encourage private trade in foodgrains, this order is required to be rescinded because the Millers fear that the Government may, at any time, ask them to sell the stock of rice at the price fixed by the Government which may cause loss to them.

The other order, namely, the East Bengal Flour and Dal Mills and Chakkis Control Order, 1948 is in force except in respect of Dal Mills. By an amendment, the Order is not applicable to Dal Mills. Since the country produces a large quantity of wheat, there is need for flour mills to manufacture atta, flour and suji. In fact, many Roller flour Mills and Chakkis have been established and these Mills and Chakkis are engaged in producing flour, Atta, suji, without being licensed. Moreover, trading in wheat and wheat products has been entrusted to the private sector businessmen. The Bangladesh Major and Compact Flour Mills Association imports wheat from the year 1992. This Association now supplies Flour, Atta and Suji to the market for open sale. The Government, by its action, is encouraging private trade in wheat and wheat products. So, the legal impediment which may stand against the open sale may be rescinded so that the business in the private sector may thrive without any hindrance.

Commercial Litigation

The answer to the question posed "are foodgrains subject to commercial and contract disputes just like any other traded commodity?" is in the affirmative. The answer to the second question "can traders sue Government in disputing tender awards?" is also in the affirmative.

Though there is chance of dispute between the Government and the grower while fixing the quantity of rice/paddy to be procured from the growers yet, it is learnt that no dispute had arisen in which any party to the dispute has moved the court. All disputes are settled amicably in accordance with the provisions of law. But this is not true with the disputes between the Government and the Rice Mill Owners. Many cases are pending in the Court and almost all the cases have been filed by the Government against the Rice Mill Owners who have defaulted in supplying the rice against paddy^d given to them. Most of the cases against the Rice Mill owners are for misappropriation of rice. Some is the case with the Carrying Contractors, namely, the Bangladesh Road Carrying Contractors, Boat Carrying Contractors, Major Carrying Contractors, that is, Flat, Barge, etc. and Railway Carrying Contractors. All disputes arise out of short supply of foodgrains.

The Government can also be sued for tender awards. Of course, till now, it is learnt that there is no dispute for tender awards on foodgrains. Tenders are invited to sell disposable rice or such rice can be sold by auction. Sale by tender or auction of rice which is not fit for human consumption but can be utilized otherwise as cattle or poultry feed or for manuring. However, where the grains of rice are broken to the extent of more than 60 percent and the condition is good for human consumption, such stock of rice is also sold by tender or auction. There is no bar to institute suits in the courts but the Courts have been restrained to issue ad interim injunctions on the Government without first hearing the Government in which transport

storage, supply, sale or purchase of foodstuffs is obstructed or hindered. Such a provision has been inserted in Act No. XXXII of 1989 by Act No. XLIX of 1992.

Credit for Foodgrain Trade

The anti-hoarding laws in the statute book were creating legal hindrance in the trading of foodgrains especially rice and paddy but, at present, the legal impediment has been removed by the Government and the traders of foodgrains are free to purchase rice or paddy from the growers and from the open market and can build up a stock of foodgrains. The impediments have been removed at the end of 1989. Though the anti-hoarding laws are in force yet they are not enforced by the Government machinery in view of the present circumstances prevailing in the country.

As the rationing system has collapsed as nowhere in Bangladesh it is in vogue, and since the impediment for stocking or storage of foodgrains and their movement has been removed, there remains no legal impediment to conduct trade in foodgrains by the traders in the private sector.

It has been ascertained from several scheduled banks, both nationalised and banks in the private sector, that, for the past 2/3 years, there is no restriction whatsoever on making loan by the banks to the foodgrains (rice/paddy) traders. The traders are free to obtain loan from the banks. Furthermore, there is no limit as to the amount of loan to be made on loan. So, the banks can make loan of any amount to the appropriate traders. However, the loan to the traders will be governed by the usual banking practices for disbursing and recovery of loan. Thus,

the traders of foodgrains (rice/Paddy) are free to obtain any amount of loan from the banks for the purpose of their trade following the usual banking practices. It may however be pointed out that the practice and procedure of making loans^v are not the same for all the banks. The banks follow their own practice and procedure for disbursing or recovery of loan made by them.

It may be mentioned here that from the year 1992, trading in wheat and wheat products has been entrusted to the private sector businessmen. The Bangladesh Major and Compact Flour Mills Association imports wheat from the year 1992. Only the quantity of wheat to be imported is fixed by the Government. The importer opens the letter of credit with a bank, provides bank guarantee and imports wheat and, after manufacturing, sells atta, flour and suji in the market at the prevailing market rate. There is no restriction whatsoever on the importer in the matter of stocking, movement and marketing of their product.

It may be stated here that though rice has^{been} allowed to be imported by the traders in the private sector from the year 1987, wheat has been so allowed only since 1992.

Export of Foodgrains

Since the catastrophe engulfed Bengal in the year 1943, Bengal or, for that matter, East Pakistan and until recently Bangladesh could not overcome the food shortage. In 1956 and again in 1974, famine conditions were prevailing in the country. Only recently, the production of rice and wheatⁱⁿ the country is satisfactory. The shortage was large in the previous years and the gap between the shortage and production is becoming less and less

every year and so Bangladesh is yet to become an exporting country of foodgrains.

However, the Government has taken a programme to export one lakh ton of boiled rice (B.R.11). This rice is being held in stock and is ready for sale to any country. The Government has fixed a price of the rice ex-godown and the price will be a little more if the Government takes the rice to the port for loading. Any private trader interested in the export of the rice may contact the Government and the Government is ready to extend all sorts of help to the exporter.

Besides the above quantity, it is learnt that some private traders of rice have exported rice to countries outside Bangladesh. One such exporter exported fine quality of rice of about 30 tons to Saudi Arabia.

As a reaction to export of rice to foreign countries, the price of rice in the local market may rise. Even then, the Government has taken the decision to export rice to foreign countries and to make a small beginning in the matter of export.

Import of Foodgrains

In the past, mostly the Government and its agency used to import rice and wheat from abroad but private parties were not barred to import foodgrains. Because the private parties did not know the know-how of import of foodgrains, that is, where and whom to approach, how to charter a ship for the carriage of foodgrains and the necessary formalities regarding importation of goods, very rarely private sector importers or businessmen had engaged themselves in this trade. Moreover, there was the

problem of storage. The private sector importers do not own godowns where they can keep the imported foodgrains nor they have got enough facilities for storage of the imported foodgrains. As a result, seldom the businessmen in the private sector would come forward to import foodgrains. However, sometimes they do import foodgrains. Some years back, one businessman in the private sector imported 75,000 tons of wheat.

Though the private importers were in a disadvantageous position, yet the Government did not allow import of foodgrains to the importers in the private sector. The Government allowed import of rice through private sector businessmen only from 1987 and of wheat from 1992. The Bangladesh Major and Compact Flour Mills Association, an association of the Flour Mills in the private sector, has been allowed to import wheat. The quantity of wheat to be imported is fixed by the Government. The Association imports wheat and, after manufacturing, sells atta, flour and suji in the market at the prevailing market rate.

Though Bangladesh is still deficient in the production of rice, yet it is very encouraging to note that for the past several years, say 6/7 years, no rice has been imported into Bangladesh. This is due to the fact that improved seeds of high yielding variety of rice and also chemical and natural fertilizers are used for the cultivation of rice. As a result Bangladesh has almost achieved self-sufficiency in its need of rice. A little deficiency in rice is met by consumption of wheat. The production of wheat in Bangladesh is also encouraging. Wheat is grown in Bangladesh and the acreage of wheat cultivable land is increasing steadily and the

BEST AVAILABLE DOCUMENT

quantum of production is quite high. Though in terms of yield, Bangladesh is far behind in comparison with any developed country, yet in the context of Bangladesh the yield is satisfactory and is steadily increasing due to scientific method of cultivation, use of chemical and natural fertilizers, irrigation facilities, use of insecticides and personal supervision and care of the cultivators.

Import of foodgrains is not a matter of pride but disgrace for the country. When the country will succeed in exporting foodgrains, it will enter into a golden era. A small beginning has been made and it is hoped that the process will continue in future. It is hoped that Bangladesh shall in the near future achieve self-sufficiency in foodgrains and will not import foodgrains to feed its ever growing population.

Enforcement, Suspension, Abolition or Amendment of the Laws regarding Foodgrains

The laws currently control the foodgrains^{trade} have been discussed earlier. The laws that are in force are enforced by the Government in the Ministry of Food. The Ministry of Food, in its turn, has entrusted to carry out the day to day functions under the orders on the functionaries of the Directorate of Food, a subordinate organisation of the Ministry of Food. The Officers and staff of the Directorate of Food carry on the duties of enforcement of the provisions of the orders relating to foodgrains. Enforcement of the laws is a collective responsibility and this duty is performed by the officers and staff of the Ministry of Food and the Directorate of Food and its subordinate offices.

BEST AVAILABLE DOCUMENT

There is no provision for suspension of the orders. Unless there is any power in the statute, neither the law nor any provision of the law can be suspended. As there is no provision for suspension either in the East Pakistan Control of Essential Commodities Act, 1956, the source of all orders, or in the orders themselves, the orders cannot be suspended. It is a different matter if an order is not enforced but that does not mean that the order has been suspended or is in suspension.

In the beginning of this Chapter, I have discussed how an order can be abolished or rescinded. Again, I may repeat that an order can be rescinded or abolished in exercise of the same powers under which the order made. The order can also be amended in exercise of the same powers under which the order was made. In the instant case, all the orders have been made or deemed to have been made in exercise of the powers under section 3 of the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). So, in exercise of the powers under section 3 of the Act, the orders can be amended or rescinded or abolished.

For the purpose of amending or repealing the aforesaid Act or for that matter any Act of Parliament, only Parliament is the authority to repeal or amend the law. A law made in the form of an Ordinance will have to be converted into an Act of Parliament otherwise the Ordinance, being a temporary law, will cease to have effect and the provisions of the Act will revive. This is the legal interpretation of the effect of a temporary law.

CHAPTER V

Recommendation and Conclusion

The Government is in a horns of a dilemma. It is still in a fix whether to control the foodgrains trade as before or should the foodgrains trade be altogether left at the mercy of the private foodgrains traders following the policy of market economy. Knowing fully well that the population of Bangladesh is increasing every year by leaps and bounds and knowing the limitations it has, the Government is groping in the dark as to what should be done in respect of privatisation of foodgrains trade.

Bangladesh is a small country intersected by large and small rivers and a portion occupied by low hills and hillocks and forests, and therefore, the area of arable land available for cultivation is meagre. Due to law of inheritance of the people living in the country, the lands are sub-divided into small fragment of uneconomic holding and the uneconomic holding of lands have affected adversely the production of crops.

The country is situated in the monsoon region and the monsoon is very unpredictable. If the monsoon winds blow in time, the production of foodgrains is high otherwise the production is much less rather scanty. It is very often visited by the natural calamities like drought, flood, cyclone, tidal bore, etc., and the result is shortage in the production of foodgrains. Yet, there is, at present, another handicap that has arisen due to non-availability of river waters as waters are withdrawn unilaterally by the upper riparian of the water courses and as a result of which river beds in the west and south of Bangladesh are drying

up and there is great shortage of water flow in the rivers and the underground water level has gone down too deep which have created problem not only for irrigation and water supply but also adversely causing an ecological imbalance in the country.

however, Bangladesh is trying its utmost to overcome the shortage of production of foodgrains by using improved varieties of high yielding seed, chemical fertilizers, natural manures, pesticides, scientific method of cultivation, mechanical implements for ploughing of lands, irrigation by deep or shallow tube wells and by giving untiring personal supervision and care by the cultivators. The result is quite encouraging. The yield is fairly high but compared to the yield per acre/hectare of developed countries, it will take some time more to reach that target. However, at the present rate of production, Bangladesh has achieved almost self-sufficiency, in the foodgrains and whatever is the deficiency, it is met by import of wheat and also grant of wheat by the foreign Government and Agencies. It is a matter of great happiness that Bangladesh has not imported rice for the last 6 to 7 years. Moreover, traders of Bangladesh has exported a little quantity of fine rice to the middle east countries and still they are doing so. The Government has earmarked one lakh ton of coarse variety of rice to be exported out of Bangladesh through private traders of foodgrains. It may be noted that the government, instead of exporting the rice itself, wants the private traders to export the quantity. This policy has, perhaps, been adopted by the government in order to encourage and giving incentive to the traders of foodgrains to export rice and also to test their ability to do so independently.

Bangladesh was so unfortunate that till recently, it could not come out from the periphery of the calamities that befall on it during the Second World War. Moreover, whenever some hopes were raised in the mind of the people to see the better days, all on a sudden it was engulfed with one or the other natural calamity and all hopes fell to the ground. However, it seems, Bangladesh is gradually overcoming the difficulties of the past and is beginning to enter into an era of new age.

The rationing system which was introduced long ago to save the people in the wane. The laws regarding rationing system in the urban areas are in force and are still maintained in the statute book but without application. The rationing system in the rural and municipal areas has been abolished and the law made for the purpose has since been rescinded. For the six urban areas, namely, Dhaka, Chittagong, Barayanganj, Khulna, Rajshahi and Rangamati, the law for rationing system has not been rescinded yet the applicability of the law is absent. The ration dealers are clamouring to reintroduce the rationing system as they are loosing business. On the other hand, the Government is following the policy of market economy and is, perhaps, determined to bring back normalcy in the matter of trade and commerce in the country. It is encouraging the traders and businessmen to conduct the business in the manner that trading should be done normally. It is refraining itself to hinder or interfere in the normal trade practices. To encourage the businessmen and to give them incentive, the Government has, in the recent past, lifted the ban on the quantum of foodgrains (rice) which a trader can keep in stock or storage and also the time limit for which a trader can keep in

store their foodgrains at one place. Now the traders and businessmen are free to purchase rice or paddy as much as they like and can store the goods for such time as he deems proper. The Bangladesh Bank has, in conformity with the policy of the Government, withdrawn all restrictive orders on the scheduled banks on making loans with respect to foodgrains trade and now the scheduled banks are free to make loans to the traders and businessmen for the purpose of their business of foodgrains.

People everywhere is feeling a sigh relief as they are not to waste time for going to the ration shops on a particular day of the week and stand in queue to await their turn for taking rations. Coming back home, they would find with dismay that all rationed articles are short weighed and at the same time adulterated. The people had no other alternative but to accept what the ration dealer gave them. Now, with the collapse of the rationing system, the people can go to the market at their convenient time and choose the articles of their liking and purchase them. There is no compulsion on them to purchase articles from one ^{particular} shop or else they would not get the articles from anywhere.

In view of what has been stated above, the Government should, without wasting any more time, make up its mind to do away with the controlling of the trade and commerce by keeping in force the unnecessary laws which only create impediments in the normal trade practices. As the situation obtaining now in the country and to give effect to the policy of market economy followed by the Government, and also the relaxations made by the Government in the matter of trading in foodgrains, it will be appropriate if the

Government rescinds the orders which definitely create or may create impediments in the way of trading of foodgrains by the traders and also on the processing of foodgrains by the Rice Millers. Until these orders are rescinded, the traders of foodgrains and Rice Millers cannot freely carry on their business. Moreover, all those orders which are not being implemented may also be rescinded.

While discussing the Orders in an earlier chapter, I have suggested what actions are to be taken in respect of those orders. I also discussed about the enactments and I have put in my suggestion as to what should be done in respect of that law.

Here again I would like to say a word about the East Pakistan Control of Essential Commodities Act, 1956 (E.P. Act I of 1956). I mentioned, while tracing the background of the Act, that the law was enacted for a temporary period and it is high time that that temporariness should now end. Let all the legal impediments be removed and let the country breathe the fresh air under market economy and let the good sense prevail upon the traders and businessmen to conduct the business scrupulously and honestly. If the aforesaid Act is repealed then the orders will automatically die.

There is no justification to keep alive this Act as this Act, being the source of all impediments in the trade and commerce in the country, has outlived its utility and is against the modern trend of market economy. Let Bangladesh follow the modern trade policy and let there be normal trade practice. In all appropriateness, the Government should take the initiative to

repeal the aforesaid Act. Since the repeal of the Act may take some time, the Orders may be rescinded in the meantime. This will ensure full participation of the traders and businessmen in the private sector not only in the foodgrains and foodgrains processing matters but also in all other matters of foodstuffs.

BEST AVAILABLE DOCUMENT

Annexures

Gazette of India
Extraordinary

dated 3rd September, 1939.

"Government of India

Defence Co-Ordination Department

Notification

Simla, the 3rd September, 1939.

No.223-M.- The following Proclamation by ~~His~~ His Excellency the Governor General, dated the 3rd September, 1939, is published for general information:-

PROCLAMATION

"I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and ex-officio Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Germany."

A. DEC. Williams

Secy. to the Govt. of India.

2 Gazette of India

Extraordinary

Dated 3rd September, 1939.

"Government of India

Defence Co-Ordination Department

Notification

Simla, the 3rd September, 1939.

No.221-M.- The following Proclamation by His Excellency the Governor General. dated the 3rd September, 1939, is published for general information:-

PROCLAMATION

In pursuance of sub-section (1) of section 102 of the Government of India Act, 1935, I, Victor Alexander John, Marquess of Linlithgow, Governor General of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by war.

A. DEC. Williams,
Secy. to the Govt. of India."

3 Government of India Act, 1935 (26 Geo. 5, c 2)

(Extract of section 102)

"102. (1) Notwithstanding anything in the preceding sections of this Chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or a part thereof with respect to any matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to ~~be~~ be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed

- 2 -

before or after the Provincial law, shall prevail, and the Provincial law shall to the ~~greater~~ extent of repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency -

(a) may be revoked by a subsequent Proclamation

(b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each house of Parliament; and

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolution of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respect things done or omitted to be done before the expiration of the said period."

4 The Defence of India Act, 1939 (35 of 1939)

- Extract -

Long title and Preamble.-

"An Act to provide for special measures to ensure the public safety and interest and the defence of British India and for trial of certain offences,

"Whereas an emergency has arisen which renders it necessary to provide ;

And Whereas the Governor-General in his discretion has declared by Proclamation under sub-section (1) of section 102 of the Government of India Act, 1935 (26 Geo. 5. c 2), that a grave emergency exists whereby the security of India is threatened by war;

It is hereby enacted as follows:-"

Section 21. "Repeal and saving.- The Defence of India Ordinance, 1939 (5 of 1939), is hereby repealed; any rules made, anything done and any action taken in exercise of any powers conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of the powers conferred by or under this Act as if this Act had commenced on the 3rd day of September, 1939."

⁵The Defence of India Rules, 1939

- Extract of rule 81 -

"81. General Control of Industry.

(2) "(a) for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever and in particular for prohibiting or withholding from sale, either generally or to specified persons or classes of persons, of articles or things kept for sale, and for requiring articles and things kept for sale to be sold either generally or to specified persons or classes of persons or in specified circumstances;"

(b) for controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired and for relaxing any maximum or minimum limits otherwise imposed on such prices or rates;".

6 The India (Proclamation of Emergency) Act, 1946
(9 & 10 Geo.6, c 23) [14th February, 1946]

-Extract of: -

"Preamble.- An Act to amend the Government of India Act, 1935, as respects the effect of Proclamation of Emergency under section one hundred and two of that Act."

Section 1. Amendment of section 102 of the Government of India Act, 1935.-~~1~~"~~The~~" In sub-section (1) of section one hundred and two of the Government of India Act, 1935 (which enables the Central Legislature, where a Proclamation of Emergency is in force, to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List), after the words "enumerated in the Provincial Legislative List" there shall be inserted the words "or to make laws, whether or not for a Province or any part thereof, with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act."

7 The India (Central Government and Legislature) Act, 1946

(9 & 10 Geo. 6, c 29)

(Preamble and relevant Provisions)

Preamble.- An Act to amend the Government of India Act, 1935, with respect to the qualifications of the Members of the Governor-General's Executive Council, to extend temporarily the powers of the Indian Legislature to make laws, to amend sub-section (4) of section one hundred and two of the said Act as to the effect of the laws passed by virtue of a Proclamation of Emergency, and for purposes connected with matters aforesaid.

Section 2. Trade and Commerce and Unemployment.- (1) Notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the period mentioned in section four of this Act have power to make laws with respect to the following matters -

(a) trade and commerce (whether or not within a Province) in, and the production, supply and distribution of, cotton and woollen textiles, paper (including newsprint), food-stuffs (including edible oil seeds and oils); petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica; and

(b) * * * * *

(c) offences against laws with respect to any of the matters ^{mentioned} in the preceding paragraphs of this sub-section, enquiries and statistics for the purposes of any of those matters, jurisdiction and powers of all Courts, except the Federal Court, with respect to any of those matters, but not including fees taken in any Court,

but any law made by the Indian Legislature which the legislature would not, but for the provisions of this section, have been competent to make shall, to the extent of incompetency, cease to have effect on the expiration of the said period except as respects things done or omitted to be done before the expiration thereof.

Section 4. The period mentioned in the two last preceding sections is the period of one year beginning with the date on which the Proclamation of Emergency in force at the passing of this Act ceases to operate ~~directly by the expiration of two years~~ or, if the Governor-General by public notification so directs, the period of two years beginning with ^{that date} ~~that date~~.

Provided that if and so often as a resolution approving the extension of the said period is passed by the both Houses of Parliament, the said period shall be extended for a further period of twelve months from that date on which it would otherwise expire so, however, that it does not in any ~~any~~ case continue for more than five years on which the Proclamation of Emergency ceases to operate.

Section 5. Duration of laws passed by virtue of a Proclamation of Emergency.- A law made by the Indian Legislature whether before or after the passing of this Act, during the continuance in force of the Proclamation of Emergency, being a law which that Legislature would not, but for the issue of such a Proclamation, have been competent to make, shall not cease to have effect as required by sub-section (4) of section one hundred and two of the Government of India Act, 1935, except to the extent to which the said Legislature would not, but for the issue of the Proclamation, have been competent to make it, and accordingly, in the said sub-

section (4) for the words "shall cease to have effect" there shall be substituted the words "shall, to the extent of incompetency, cease to have effect."

8 Gazette of India

Extraordinary

Dated 1st April, 1946.

"Government of India

Secretariat of the Governor General (Public)

No. F.54/46-G.G(A).- The following Proclamation by His Excellency the Governor General, dated the 1st April, 1946, is published for general information:-

PROCLAMATION

In pursuance of clause (a) of sub-section (3) of section 102 of the Government of India Act, 1935, I, Archibald Percival, Viscount Wavell, Governor-General of India, by this Proclamation revoke the Proclamation of Emergency made under sub-section (1) of the said section on the 3rd day of September, 1939.

WAVELL

Governor-General

V.P. Menon

**Secretary to the Governor-General
(Public)**

9 The Emergency Provisions (Continuance) Ordinance, 1946
Ordinance No. XX of 1946 25th September, 1946

— — — — —

An Ordinance to provide for the continuance of certain provisions of the Defence of India Act, 1939 and of the Defence of India Rules.

WHEREAS an emergency has arisen which makes it necessary to provide for the continuance of certain provisions of the Defence of India Act, 1939 (XXXV of 1939), and of the Defence of India Rules made thereunder;

AND WHEREAS the Indian Legislature is not in session;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c.2), the Governor-General is pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement.- (1) This Ordinance may be called the Emergency Provisions(Continuance) Ordinance, 1946.

(2) It extends to the whole of British India and it applies also -

(a) to British subjects and servants of the Crown in any part of India;

(b) to British subjects who are domiciled in any part of India wherever they may be; and

(c) to, and to persons on, ships and aircrafts, registered in British India wherever they may be.

(3) It shall come into force on the first day of October, 1946.

2. Continuance of certain emergency provisions.- (1) Notwithstanding the expiry of the Defence of India Act, 1939 (XXXV of 1939),-

(i) the provisions of the Defence of India Rules mentioned in the first column of the Schedule to this Ordinance shall continue in force and have effect subject to the modifications specified in the second column thereof;

(ii) any order or other instrument made under or in pursuance of any of the said provisions and in force immediately before the expiry of the Defence of India Act, 1939 (XXXV of 1939), shall continue in force so far as consistent with the provisions as continued in force by this section and be deemed to be made ~~under the provisions~~ under the provisions so continued in force;

(iii) the Indian Navy (Discipline) Act, 1934 (XXXIV of 1934), shall continue to have effect as if for section 90 of the Naval Discipline Act as set forth in the First Schedule thereto, the section set forth in clause (d) of sub-section (5) of section 6 of the Defence of India Act,

1939 (XXXV of 1939), had been substituted.

(2) References in sub-section (1) to the Defence of India Rules shall be construed as references to those Rules as in force immediately before the commencement of this Ordinance.

(3) Section 6 of the General Clauses Act, 1897 (X of 1897), shall apply upon the expiry of any Defence of India Rule continued in force by this section as if that rule were an enactment and had then been repealed by a Central Act.

3. Effect of rules etc., inconsistent with other enactments.- The provisions of the Defence of India Rules as continued in force by section 2 and all orders made or deemed to be made under such provisions shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

4. Delegations.- (1) The Central Government may by order direct that any power or duty which by or under any of the provisions as continued in force by section 2 is conferred or imposed upon the Central Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority subordinate to that Government or by any other authority.

- 4 -

(2) A Provincial Government may by order direct that any power or duty which by or under any of the provisions as continue in force by section 2 is conferred or imposed on the Provincial Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority subordinate to that Government.

(3) All orders delegating any power or duty conferred or imposed by any of the provisions continued in force by section 2 made by whatever ^{authority} ~~immediately~~ before the commencement of the Ordinance and in force immediately before such commencement, shall continue in force and be deemed to be made by the appropriate Government under this section.

5. Savings as to orders. - (1) No order made or deemed to be made in exercise of any power conferred by or under any of the provisions continued in force by section 2 shall be called in question in any court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under any of the aforesaid provisions, a court shall, within the meaning of the Evidence Act, 1871 (I of 1871), presume that such order was so made by that authority.

6. Protection of action taken under rules. - (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended

to be done in pursuance of any of the provisions continued in force by section 2 or any other made or deemed to be made thereunder.

(2) No suit or other legal proceeding shall be against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of any of the provisions continued in force by section 2 or any order made or deemed to be made thereunder.

SCHEDULE

(See section 2)

PROVISIONS OF THE DEFENCE OF INDIA RULES CONTINUED IN FORCE.

Defence of India Rules	Modifications.
Rule 1 - Short title. . .	
Rule 2 - Definitions. . .	Clauses (6),(7),(8) and (II) shall be omitted.
Rule - 3 Interpretation. . .	Sub-rule (2) shall be omitted.
Rule - 4 Saving.	
Rule - 5 Non-compliance with these rules or orders made there- under	
Rule - 62 Measures for safety of Indian vessels.	In sub-rule (1), clause (bb) shall be omitted.
Rule - 65 Control of trade by sea.	(a) In sub-rule (1), the words, brackets and figures "without

prejudice to any order made under sub-rule (1) of rule 60" and the words "in the interests of the defence of British India and the efficient prosecution of the war, or" shall be omitted.

(b) In sub-rule (4), for the words, brackets and figures "sub-rule (1) of rule 60 or any other provision of these Rules" the words, brackets and figures "sub-rule (1) or sub-rule (3)" shall be substituted, and the words "in the interests of the defence of British India and the efficient prosecution of the war, or" shall be omitted.

Rule 81 - General control of Industry, etc.

For this rule, the following rule shall be substituted:-

"(1) In this rule "appropriate Government" means in relation to a Chief Commissioner's Province, the Central Government or the Chief Commissioner and in relation to a Governor's Province, the Provincial Government.

(2) The appropriate Government,

so far as appears to it to be necessary or expedient for maintaining supplies and services essential to the life of the commodity, may by order provide -

(a) for regulating or prohibiting the production, distribution, use or consumption of electrical energy;

(b) for regulating the rates which may be charged by an undertaking supplying electrical energy and for *relaxing* any maximum or minimum limits otherwise imposed on such rates;

(c) for regulating the letting and sub-letting of any accommodation or class of accommodation in a Chief Commissioner's Province, whether residential or non-residential, whether furnished or unfurnished and whether with or without board, and in particular -

- (ii)
 - (1) forecontrolling the rents for such accommodations either generally or when let^{to} specified persons or classes of persons or in specified circumstances;
 - (ii) for preventing the eviction of tenants and sub-tenants from such accommodation for specified circumstances; and
 - (iii) for requiring such accommodation to be let either generally or to specified persons or classes of persons or in specified circumstances;
- (d) for collecting any information or statistics with a view to regulating any of the matters mentioned in the preceding clauses; and
- (e) for any incidental and supplementary matters for which the appropriate Government thinks it expedient for the purposes of the order to provide, including

in particular the entering and inspection of premises to which the order relates with a view to securing compliance with the order, the grant or issue of licenses, permits, certificates and other documents and the charges of fees there^{on}; and an order made under this rule may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings and either to the whole or to any part of any undertaking, and so as to have effect either generally or in any particular area.

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both".

Rule 81A - Avoidance of

strikes and lockouts;

(a) For the words "Central Government" wherever they occur in the rule the words "appropriate Government" shall be substituted.

(b) In sub-rule (1) for the words "securing the defence of British

India', the public safety, the maintenance of public order or the efficient prosecution of the war", the words "securing the public safety or the maintenance of public order" shall be substituted.

(c) In sub-rule (5), after the words "In this rule" the following shall be inserted:-

"the expression" appropriate Government" shall mean, in relation to trade disputes concerning any industry, business or undertaking carried on ^{by the Central Government or by} a railway company operating a Federal Railway and trade disputes concerning a mine or ^{an} oilfield or the port authority of a major port, the Central Government, and in relation to any other trade disputes, the Provincial Government; and"

Rule 84 - Power to prohibit or restrict the import and export of goods.

Rule 85A - Control of carriage of goods by railways.

Rule 88 - Handling and conveyance
of ammunition, etc.

In sub-rule (1) for the words
"securing the defence of British
India or the efficient prosecution
of war," the words "facilitating
the disposal of accumulated stocks
of ammunition, explosives or
inflammable substances" shall be
substituted.

Rule 90A - Control of use, etc., of
imported silver.

Rule 90B - Restriction on export of
money and gold.

Rule 91 - Restriction on purchases
of foreign exchange.

Rule 92 - Acquisition by the Central
Government of foreign exchange.

Rule 92A - Restriction on payments,
etc.

Rule 92B - Blocked accounts.

Rule 92C - Power to prohibit action
on certain orders as to gold, etc.

The words "If the Central
Government is of opinion
that it is necessary or
expedient so to do for
securing the defence of

British India or the efficient prosecution of the war," shall be omitted.

Rule 92D - Requirements as to payment for goods exported to certain territories.

Rule 93 - Restriction on purchases and export of securities.

Rule 94 - Acquisition by the Central Government of foreign securities.

Rule 94A - Control of Capital Issues.

Rule 95 - Banks to satisfy themselves that provisions are not contravened.

Rule 97 - Definition.

Rule 98~~9~~ - Prohibition of trading with the enemy.

Rule 99 - Control of rights, etc., in respect of trading with the enemy.

Rule 100 - Power to appoint Controllers etc., of Enemy Trading.

Rule 100A - Powers of Controllers, etc., of Enemy Trading.

In sub-rule (1), sub-clauses (ii) and (iii), of clause (b) shall be omitted.

- Rule 101A - Penalty for failure to comply with orders of Controllers, etc. The words and figures "or any person authorised by a Controller under rule 101" shall be omitted.
- Rule 103 - Definitions Omit clause (3).
- Rule 104 - Prohibition of trade with enemy firms and purchase of enemy currency. Omit sub-rule (2-4).
- Rule 105 - Power to appoint Controllers, etc., of enemy firms.
- Rule 106 - Powers of Controllers, etc., of enemy firms. Omit clauses (ii) and (iii).
- Rule 108 - Penalty for failure to comply with orders of Controllers, etc.
- Rule 110 - Contracts with enemy firms.
- Rule 111 - Transfer of property to or by enemy firms.
- Rule 113A - Power to carry on business of enemy firm.
- Rule 114 - Collection of debts of enemy firms and custody of property.
- Rule 114A - Power to control and wind up certain business.

Rule 116 - Power to obtain information.

For sub-rule (1), the following sub-rule shall be substituted:-
"(1) The Central Government may by order require any person to furnish to any specified authority or person any such informations in his possession as may be specified in the order, being information which that Government considers it necessary or expedient to obtain for the purpose of rules 90A to 94."

Rule 117 - False Statements.

Rule 117A - Power to require production of books, etc.

Rule 118 - Prohibition against disclosing information.

Rule 119 - Publication, affixation and defacement of notices.

Rule 121 - Attempts, etc., to contravene rules.

The words "or does any act preparatory to" shall be omitted.

Rule 122 - Offences by corporations.

Rule 123A - Burden of proof in certain cases.

- III -

- 15 -

Rule 130 - Cognizance of contra-
ventions of the rules, etc.

In sub-rule (3), the figures
and letter "8.A.35" and the
words and figures "under rule
56 or" shall be omitted.

✓
10 The Essential Supplies (Temporary Powers) Ordinance, 1946

Ordinance No. XVIII of 1946 [25th September, 1946]

An Ordinance to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities.

WHEREAS an emergency has arisen which makes it necessary to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, foodstuffs (including edible oil-seeds and oils), cotton and woollen textiles, paper (including newsprint), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica;

AND WHEREAS the Indian Legislature has been empowered by section 1 of the India (Central Government and Legislature) Act, 1946 (9 and 10 Geo. 6, c. 39), to make laws with respect to the matters aforesaid;

AND WHEREAS the Indian Legislature is not in session;

NOW, THEREFORE, in exercise of the powers conferred by section 14 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 22), the Governor-General is pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement.- (1) This Ordinance may be called the Essential Supplies (Temporary Powers) Ordinance, 1946.

(2) It extends to the whole of British India.

(3) It shall come into force on the first day of October, 1946.

2. Definitions.- In this Ordinance, unless there is anything repugnant in the subject or context.-

(a) "essential commodity" means any of the following classes of commodities:-

(i) foodstuffs,

(ii) cotton and woollen textiles,

(iii) paper,

(iv) petroleum and petroleum products,

(v) spare parts of mechanically propelled vehicles,

(vi) coal.

(vii) iron and steel,

(viii) mica;

(b) "food-crops" shall include crops of sugar-cane;

(c) "foodstuffs" shall include edible oilseeds and oils;

(d) "notified order" means an order notified in the Official Gazette;

(e) "paper" shall include newsprint;

(f) "Provincial Government", in relation to a Chief Commissioner's Province, means the Chief Commissioner.

3. Powers to control production, supply, distribution, etc. of essential commodities.- (1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for restricting or prohibiting the production, supply and distribution thereof, and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide -

- (a) for regulating by licences, permits or otherwise the production and manufacture of any essential commodity;
- (b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally or of specified food-crops;
- (c) for controlling the prices at which any essential commodity may be bought or sold;
- (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition,

- 4 -

- use or consumption of any essential commodity;
- (e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
 - (f) for regulating any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances as may be specified in the order;
 - (g) for regulating or prohibiting any class of commercial or financial transactions relating to food-stuffs or cotton textiles, which in the opinion of the authority making the order are, or if unregulated are likely to be detrimental to public interest;
 - (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
 - (i) for requiring persons engaged in the production, supply or distribution of or trade or commerce in any essential commodity to maintain and produce for inspection such books, accounts and records relating to the business and to furnish such information relating thereto, as may be specified in the order;

- 5 -

(4) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and craft, the seizure by a person authorised to make such search of any article in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant of issue of licences, permits or other documents, and the charges of fees thereof.

(3) An order made under sub-section (1) may confer powers and impose duties upon the Central Government or officers and authorities of the Central Government, notwithstanding that it relates to a matter in respect of which the Provincial Legislature also has power to make laws.

(4) The Central Government, so far as it appears to it to be necessary for maintaining or increasing the production and supply of coal, may by order authorising any person (hereinafter referred to as an authorised controller) to exercise, with respect to any colliery undertaking or any part thereof specified in the order, such functions of control as may be specified by the order; and so long as an order made under this sub-section is in force with respect to any colliery, undertaking or part thereof -

- (a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government so, however, that he shall not have any power to give any direction inconsistent with the provisions of ~~any~~ any Act or other instruments determining the functions of the undertakers except in so far as may be specifically provided by the order; and
- (b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having any function of management in relation to the undertaking or part shall comply with any such directions.

4. Delegation of powers.- The Central government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by -

- (a) such officer or authority subordinate ^{to} the Central Government, or
- (b) such Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction.

5. Continuance in force of existing orders.- Until other provisions are made under this Ordinance, any order, whether notified or not, made by whatever authority under rule 80-B, or sub-rule (2) or sub-rule (3) of rule 81 of the Defence of India Rules, in respect of any matter specified in section 3, which was in force immediately before the commencement of this Ordinance shall, notwithstanding the expiration of the said rules, continue in force so far as consistent with this Ordinance and be deemed to be an order made under section 3; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Ordinance.

6. Power to issue directions to Provinces.- The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any order made or deemed to be made under section 3.

7. Effect of orders inconsistent with other enactments.- Any order made or deemed to be made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or any instrument having effect by virtue of any enactment other than this Ordinance.

8. Penalties.- If any person contravenes any order made or deemed to be made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty:

Provided that where the contravention is of an order relating to food-stuffs which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part, of the property.

9. Special provisions regarding fines.- Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (V of 1898), it shall be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made or deemed to be made under section 3.

10. Attempts, etc., to contravene orders.- Any person who attempts to contravene, or abets a contravention of, any

order made or deemed to be made under section 3 shall be deemed to have contravened that order.

II. Offences by corporations.- If the person contravening an order made or deemed to be made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

12. False statements.- If any person -

(i) When required by any order made or deemed to be made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

13. Burden of proof in certain cases.- Where any person is prosecuted for contravening any order made or deemed to be

- 10 -

made under section 3 which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document, shall be on him.

14. Cognizance of offences.- No Court shall take cognizance of any offence punishable under this Ordinance except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (XLV of 1860).

15. Power to try offences summarily.- Any magistrate or bench of magistrates empowered for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898 (V of 1898), may on application in this behalf being made by the prosecution, try in accordance with the provisions contained in sections 202 to 265 of the said Code any offence punishable under this Ordinance.

16. Saving as to orders.- (1) No order made or deemed to be made in exercise of any power conferred by or under this Ordinance shall be called in question in any Court,

(2) Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under

- II -

this Ordinance, a Court shall, within the meaning of the Indian Evidence Act, 1872 (I of 1872), presume that such order was so made by that authority.

17. Protection of action taken under the Ordinance.-

(1) No suit, prosecution or other legal proceeding shall ~~be~~ lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made or deemed to be made under section 3.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made or deemed to be made under section 3.

|| THE ESSENTIAL SUPPLIES (TEMPORARY POWERS) ACT, 1946

ACT NO. XXIV OF 1946

[19th November, 1946]

- - - - -

An Act to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities.

WHEREAS it is necessary to provide ^{for} the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, food-stuffs (including edible oilseeds and oils), cotton and woollen textiles, paper (including newsprint), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica;

AND WHEREAS the Legislature has been empowered by section 2 of the India (Central Government and Legislature) Act, 1946, to make laws with respect to the matters aforesaid;

It is hereby enacted as follows:-

1. Short title, extent and duration.- (1) This Act may be called the Essential Supplies (Temporary Powers) Act, 1946.

(2) It extends to all the Provinces and the Capital of the Federation.

(3) It shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central

Government and Legislature) Act, 1946, except as respects things done or omitted to be done before the expiration thereof, and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had then been repealed by a Central Act.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

- (a) "essential commodity" means any of the following classes of commodities:-
- (i) foodstuffs,
 - (ii) cotton and woollen textiles,
 - (iii) paper,
 - (iv) petroleum and petroleum products,
 - (v) spare parts of mechanically propelled vehicles,
 - (vi) coal,
 - (vii) iron and steel,
 - (viii) mica,
 - (ix) such other classes of commodities as may be declared by the Governor-General to be essential commodities by an Order under clause (a) of sub-section (I) of section 2 of the India (Central Government and Legislature) Act, 1946.
- (b) "food-crops" shall include crops of sugarcane;
- (c) "foodstuffs" shall include edible oilseeds and oils;

- 3 -

- (d) "notified order" means an order notified in the official Gazette;
- (e) "paper" shall include newsprint;
- (f) "Provincial Government", in relation to a Chief Commissioner's Province, means the Chief Commissioner, [and in relation to the Capital of the Federation means the Administrator of Karachi].

3. Powers to control production, supply, distribution, etc., of essential commodities.- (I) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, or, in respect of cloth and yarn for recovering any increase in those prices accruing before the seventeenth day of August, 1949, upon a direction of a competent authority increasing those prices, or, in respect of cloth and yarn, for recovering the margins accruing before the seventeenth day of August, 1949, to a particular class of dealers upon a direction of such authority eliminating that class, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (I), an order made thereunder may provide -

- (a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;
- (b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;
- (c) for controlling the prices at which any essential commodity may be bought or sold;
- [(cc) in respect of cloth and yarn, for the payment by a producer or a dealer to the Central Government of -
 - (i) any increase in the price arising upon a direction of a competent authority fixing the price thereof, or
 - (ii) any margins accruing to a particular class of dealers upon a direction of a competent authority eliminating that class;and an order under this clause may be given effect from any date after the thirty-first day of December, 1947;]

- (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;
- (e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
- (f) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons ^{class of persons or} or in such circumstances, as may be specified in the order;
- (g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles, which, in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental, to public interest;
- (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (i) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(j) for any incidental and supplementary matters, including in particular the entering, and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

(3) An order made under sub-section (I) may confer powers and impose duties upon the Central Government or officers and authorities of the Central Government, notwithstanding that it relates to a matter in respect of which the Provincial Legislature also has power to make laws.

(4) The Central Government, so far as it appears to it to be necessary for maintaining or increasing the production and supply of an essential commodity, may by order authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order, such functions of control as may be provided by the order; and so long as an order made under this sub-section is in force with respect to any undertaking or part thereof -

- 7 -

- (a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in so far as may be specifically provided by the order, and
- (b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with ~~with~~ the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

4. Delegation of powers.- The Central Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by -

- (a) such officer or authority subordinate to the Central Government, or
- (b) such Provincial Government or such officer or authority subordinate to a Provincial Government,
- ~~as~~ as may be specified in the direction.

5. Power to issue directions to Provinces.- The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any order made under section 3.

6. Effect of orders inconsistent with other enactments.- Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

7. Penalties.- (I) If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty:

Provided that where the contravention is of an order relating to foodstuffs which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part, of the property.

(IA) The owner of any vessel, conveyance or animal carrying any property in respect of which an order under section 3 is contravened shall, if the carrying is part of the transaction involving the contravention and if he knew

or had reason to believe that the contravention was being committed, he deemed to have contravened the order, and in addition to the punishment to which he is liable under sub-section (1) the vessel, conveyance or animal shall, when the order provides for forfeiture of the property in respect of which the order is contravened, be forfeited to the Central Government.

(2) If any person to whom a direction is given under sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

8. Attempts and abetments.- Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

9. Offences by corporations.- If the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

10. False statements.- If any person -

(1) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any

- 10 -

information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

11. Cognizance of offences.- No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Pakistan Penal Code.

12. Power to try offences summarily.- Any magistrate or bench of magistrates empowered for the time being to try in a summary way the offences specified in sub-section (I) of section 260 of the Code of Criminal Procedure, 1898 (V of 1898), may, on application in this behalf being made by the prosecution, try in accordance with the provisions contained in sections 262 to 265 of the said Code any offence punishable under this Act.

13. Special provision regarding fines.- Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (V of 1898), it shall be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

14. Presumption as to orders.- (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Evidence Act, 1872 (I of 1872), presume that such order was so made by that authority.

15. Burden of proof in certain cases.- Where any person is prosecuted for contravening any order made under section 3 which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document, shall be on him.

16. Protection of action taken under the Act.- (1) No suit, prosecution or other legal proceeding shall lie against

any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

17. Repeal and saving.- (1) The Essential Supplies (Temporary Powers) Ordinance, 1946 (Ord.XVIII of 1946), is hereby repealed.

(2) Any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act.

(3) For the removal of doubts it is hereby declared -

(a) that for the purposes of the said Ordinance and this Act an order of the nature referred to in section 5 of the said Ordinance made before the commencement of the said Ordinance and not

- 13 -

previously rescinded shall be deemed to be, and always to have been, an order in force immediately before such commencement, notwithstanding that such order or parts of it, may not then have been in operation, either at all or in particular areas;

- (b) that for the purposes of this Act an order made or deemed to be made under the said Ordinance and not rescinded prior to the commencement of this Act shall be deemed to be an order in force immediately before the commencement of this Act, notwithstanding that such order, or parts of it, may not then be in operation, either at all or in particular areas.

¹² The Indian Independence Act, 1947 (1947 Geo. 6, c 30)

[Extract of section 18]

"18. Provision as to existing laws, etc.- (1) In so far as any Act of Parliament, Order-in-Council, order, rule, regulation or other instrument passed or made before the appointed day¹ operates otherwise than as part of law of British India or the new Dominions, references therein to India or British India however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter require:

Provided that nothing in this sub-section shall be construed as ~~continuing~~ ^{continuing} in operation any provision in so far as the continuance thereof as adapted by this sub-section is inconsistent with any of the provisions of this Act other than this section.

(2) Subject to the provision of sub-section (1) of this section and to any other provision of this Act, the Orders in Council made under sub-section (5) of section three hundred and eleven² of the Government of India Act, 1935, for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than

as part of the law of British India or the new Dominions.

(3) Save as otherwise expressly provided in this Act, the law of British India and the several parts thereof existing immediately before the appointed day^I shall, so far as applicable and with necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other legislation or other authority having power in that behalf.

(4) It is hereby declared that Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor-General and the Governors of the Provinces lapse as from the appointed day^I and nothing in this Act shall be construed as continuing in force any provision of the Government of India Act, 1935 relating to such Instruments of Instructions.

(5) As from the appointed day^I, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the Dominions."

I. "Appointed day" is 15th August, 1947/S.1(2)

2. "Section three hundred and eleven" is the interpretation section in the Government of India Act, 1935.

13 MINISTRY OF INDUSTRIES

Karachi, the 13th April 1953

No. PD-5 (I)/53.- The following Resolution passed by the Constituent Assembly (Legislature), on the 28th March 1953, is published for general information:-

"In pursuance of the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, this Assembly hereby approves the extension of the period mentioned in section 4 of the said Act for a further period of twelve months commencing on the first day of April 1953".

SHER MUHAMMAD SYED

Officer of Special Duty.

14 The Essential Supplies (Continuance of Temporary Powers)
Ordinance, 1955 (Ord. X of 1955) [30.3.1955]

(Expires on 25 April, 1955)

[Extracts of Preamble & Repeal Provisions]

Preamble.- "Whereas an emergency has arisen which renders it necessary to provide for the continuance of powers to control the production, treatment, storage, movement, transport, supply, distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain commodities;

And Whereas the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), provided for the continuance of such powers and that Act expires on 31st March, 1955,

And Whereas a Proclamation of Emergency has been issued for the purposes of section 102 of the Government of India Act, 1935 (26 Geo.5, Ch.2) as amended by the Proclamation of Emergency Act, 1946 (9 & 10 Geo.6, Ch.23), and it appears to the Governor-General that the provisions hereinafter made are proper provisions in view of the nature of the emergency;

Now, Therefore, in exercise of the powers conferred by sub-section (1) of section 42 of the Government of India Act, 1935 (26 Geo.5, Ch.2), and of all other powers enabling him in that behalf, the Governor-General is pleased to make and promulgate the following Ordinance:-"

Section 17. Repeal and saving.- (1) The Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), is hereby repealed.

(2) Any order made or deemed to be made under the said Act and in force immediately before the commencement of this Ordinance shall continue in force and be deemed to be an order made under this Ordinance; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Ordinance.

(3) For the removal of doubts it is hereby declared -

(a) that for the purposes of the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946), the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), and this Ordinance, an order of the nature referred to in section 5 of the Essential Supplies (Temporary Powers) Ordinance, 1946, made before the commencement of that Ordinance and not previously rescinded shall be deemed to be, and always to have been, an order in force immediately before such commencement, notwithstanding that such order or parts of it may not then have been in operation, either at all or in particular areas;

(b) that for the purposes of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), and this Ordinance, an order made or deemed to be made under the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946), and not rescinded prior to the commencement of the said Act shall be deemed to be an order in force immediately before such commencement, notwithstanding

that such order, or parts of it, may not then be in operation, either at all or in particular areas;

(c) that for the purposes of this Ordinance, an order made or deemed to be made under the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), and not rescinded prior to the commencement of this Ordinance shall be deemed to be an order in force immediately before such commencement, notwithstanding that such order, or parts of it, may not then be in operation either at all or in particular areas."

Provincial List

39. Industries; ²⁷42. Trade and commerce within the Province;
²⁹43. Production, manufacture, supply and distribution of goods;
46. Manufacture, supply and distribution of salt; ³⁰51. Adulteration
of food-stuffs and other goods.
-

27. Government of India Act, 1935, Seventh Schedule, List II
(Provincial List).

29. -do-

30. -do-

16 The East Pakistan (Essential Supplies) Ordinance, 1956
(E.P. Ord. VI of 1956) [25th April, 1956]

- Extract -

Preamble.- This Ordinance was made and promulgated under Article 102 of the Constitution of the Islamic Republic of Pakistan (1956) "to provide for powers to control the production, treatment, keeping, storage, movement, transport, supply and distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain commodities within East Pakistan."

"16. Saving.- Any order made or deemed to be made under the Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 and in force immediately before the commencement of this Ordinance shall in so far as it is not inconsistent with the provisions of this Ordinance and until such time as the Provincial Government or an officer authorised by the Provincial Government issues orders under this Ordinance continue in force and be deemed to be an order made under this Ordinance; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Ordinance."

J
17 THE ESSENTIAL SUPPLIES ACT, 1957

ACT III OF 1957 [6th March, 1957]

An Act to provide for price control and regulation of trade and commerce between the Provinces

This Act of Parliament received the assent of the President on the 6th March, 1957, and was published for general information in the Gazette, Extraordinary, 6th March, 1957.

Whereas it is expedient to provide for price control and regulation of trade and commerce between the Provinces and between a Province and the Federal Capital in respect of certain commodities;

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Essential Supplies Act, 1957.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context, -

(a) "essential commodity" means any of the classes of commodities mentioned in the Schedule to this Act,

- 2 -

and such other classes of commodities as may be declared by the Central Government by notification in the official Gazette to be essential commodities for the purposes of this Act;

(b) "notified order" means an order notified in the official Gazette;

(c) "Provincial Government", in relation to the Federal Capital means the Chief Commissioner of Karachi.

3. Powers to make orders, etc.- (1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution of an essential commodity between the Provinces or between a Province and the Federal Capital and availability at fair prices, may, by notified order, provide for regulating the movement, transport and sale of the essential commodity between the Provinces or between a Province and the Federal Capital and for the prices to be charged or paid for it at any stage of transaction therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide -

(a) for controlling the prices at which any essential commodity may be bought or sold in any area;

- (b) for regulating by licences, permits or otherwise, the transport, movement and distribution between the Provinces or between a Province and the Federal Capital of an essential commodity;
- (c) for prohibiting the withholding of sale between the Provinces or between a Province and the Federal Capital of an essential commodity ordinarily kept for sale;
- (d) for requiring any person holding stock in the Federal Capital or in a Province of an essential commodity to sell in another Province or in the Federal Capital the whole or specific part of the stock at such price to such persons or class of persons under such circumstances as may be specified in the order;
- (e) for collecting any information or statistics with view to regulating or prohibiting any of the aforesaid matters;
- (f) for requiring persons engaged in any of the matters mentioned above in respect of any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the order;

(g) for any incidental and supplementary matters, including in particular the entering, and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, or any records connected therewith, the grant or issue of licences, permits or other documents, and the charging of fees thereof.

4. Delegation of powers.- The Central Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction be exercisable also by -

(a) such officer or authority subordinate to the Central Government, or

(b) such Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction.

5. Effect of orders inconsistent with other enactments.- Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

6. Penalties.- (1) If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to the Central Government:

Provided that where the contravention is of an order relating to foodstuffs which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part, of the property.

(2) The owner of any vessel, conveyance or animal carrying any property in respect of which an order under section 3 is contravened shall, if the carrying is part of the transaction involving the contravention and if he knew or had reason to believe that the contravention was being committed, be deemed to have contravened the order, and in addition to the punishment to which he is liable under sub-section (1) the vessel, conveyance or animal shall, when the order provides for forfeiture of the property in respect of which the order is contravened, be forfeited to the Central Government.

7. Attempts and abetments.- Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

8. Offences by Corporations.- If the person contravening an order made under section 3, is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

9. False statements.- If any person -

(i) when required by an order made under section 3 to make any statement or furnish any information makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish;

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

10. Cognizance of offences.- No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Pakistan Penal Code.

11. Powers to try offences summarily.- Any Magistrate or bench of Magistrates empowered, for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898, may, on application in this behalf being made by the prosecution, try in accordance with the provisions contained in sections ^{to 265} 262 of the said Code any offence punishable under this Act.

12. Special provision regarding fines.- Notwithstanding anything contained in section 32 of the Code of Criminal Procedure 1898, it should be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

13. Presumption as to order.- (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Evidence Act, 1872, presume that such order was so made by that authority.

14. Burden of proof in certain cases.- Where any person is prosecuted for contravening any order made under section 3 which prohibits him from doing an act or being in possession of a thing without lawful authority, or without a permit, licence or other documents, the burden of proving that he has such authority, permit, licence or other documents, shall be on him.

15. Protection of action taken under the act.- (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

16. Repeal.- The Essential Supplies Ordinance, 1956, is hereby repealed.

SCHEDULE

(i) Foodstuffs including edible oilseeds, and Oils.

(ii) Paper including newsprint, photographic paper, paper board, pulp board, wall board, fibre board, straw board, box board, cellulose wadding, cellulose film and other similar materials, which are manufactured, wholly or mainly either from vegetable fibres or pulp thereof or both from such fibres and such pulp, but does not include of these materials.

(iii) Petroleum and petroleum products.

(iv) Mechanically propelled vehicles, including those in in completely knocked down condition, their spare parts, and tyres and tubes for the same.

(v) Coal.

(vi) Iron and Steel.

(vii) Drugs and medicines, including those administered by injection.

(viii) Chemicals, including gases.

(ix) Electrical and radio goods and appliances including wires and cables.

(ixa) *Glass plates and glass sheets.*

(x) Artificial Silk Yarn.

(xi) Cycles and their spare parts.

(xii) Timber.

(xiii) Sanitary and water supply fittings.

(xiv) & Infant and patient foods and allied articles.

(xv) Cement.

(xvi) Cigarettes.

(xvii) Tallow.

(xviii) Ammunition including gun and rifle cartridges.

(xix) 35 mm.(cine) raw films.

(xx) Torch cells.

(xxi) Cotton textiles and yarn.

(xxii) Chemical fertilizers.

(xxiii) Glazed Tiles.

(xxiv) Art Silk Fabrics.

18 The East Pakistan Control of Essential Commodities Ordinance, 1956 (E.P.Ord. X of 1956) [30th June, 1956].

- Extract -

"16. Repeal and saving.- (1) The East Pakistan (Essential Supplies) Ordinance, 1956 (E.P. Ord. VI of 1956), is hereby repealed.

(2) Notwithstanding such repeal, any order made or deemed to be made under the East Pakistan (Essential Supplies) Ordinance, 1956 (E.P. Ord. VI of 1956) and in force immediately before the commencement of this Ordinance shall, until such time as the Provincial Government or an officer authorised by the Provincial Government issues orders under this Ordinance, continue in force and be deemed to be an order made under the corresponding provisions of this Ordinance; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Ordinance."

19 THE EAST PAKISTAN CONTROL OF ESSENTIAL COMMODITIES
ACT, 1956 (E.P.ACT I OF 1956) 22nd September, 1956

- Summary -

An Act to provide for powers to control the production, treatment, keeping, storage, movement, transport, supply, distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain commodities.

WHEREAS it is expedient to provide for powers to control the production, treatment, keeping, storage, movement, transport, supply, distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain commodities within East Pakistan;

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the East Pakistan Control of Essential Commodities Act, 1956.

(2) It extends to the whole of East Pakistan.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(a) "essential commodity" means any of the following classes of commodities:-

(i) foodstuffs;

(ii) cotton and woollen textiles;

- (iii) paper, including paper-board, pulp-board, wall-board, fibre board, straw board, box-board, cellulose wadding, cellulose films and other similar materials which are manufactured wholly or mainly either from vegetable fibres or a pulp thereof or both from such fibres and such pulp, but does not include any of these materials;
- (iv) mechanically propelled vehicles, their spare parts and tyres and tubes for the same;
- (v) coal;
- (vi) iron and steel;
- (vii) mica;
- (viii) ~~dr~~ drugs and medicines, including those administered by injection;
- (ix) chemicals including gases;
- (x) electrical and radio goods and appliances, including wires and cables;
- (xi) medical and surgical instruments and appliances;
- (xii) glass any glassware including scientific and laboratory equipment;
- (xiii) artificial silk yarn;
- (xiv) cycles, their spare parts, and tyres and tubes for the same;
- (xv) matches;
- (xvi) timber;

- (xvii) sanitary and water supply fittings;
 - (xviii) infant and patient foods and allied articles;
 - (xix) cement;
 - (xx) cigarettes;
 - (xxi) fertilizers;
 - (xxii) tallow;
 - (xxiii) torch cells;
 - (xxiv) such other classes of commodities as may be declared by the Provincial Government by notification in the Official Gazette to be essential commodities for the purposes of this Act;
- (b) "foodstuffs" shall include edible oilseeds and oils;
- (c) "notified order" means an order notified in the Official Gazette; and
- (d) "paper" shall include newsprint.

3. Powers to control production, supply, distribution, etc., of essential commodities.-(1) The Provincial Government, so far as it appears to it to be necessary or expedient for maintaining, or increasing supplies of any essential commodity or for securing its equitable distribution and availability at fair prices, may by notified order provide for regulating, or prohibiting the production, treatment, keeping, storage, movement, transport, supply, distribution, disposal, acquisition, use or consumption thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide -

- (a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;
- (b) for controlling the prices at which any essential commodity may be bought or sold;
- (c) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;
- (d) for prohibiting the withholding from sale of any essential commodity kept for sale;
- (e) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order;
- (f) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles which, in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental to public interest;
- (g) for requiring persons engaged in the production, supply or distribution of, trade or commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(h) for any incidental and supplementary matters, including in particular the entering, and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that ~~there~~ a contravention of the order has been, is being, or is about to be committed, or any records connected therewith, the grant or issue of licences, permits or other documents and the charging of fees therefor and for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters.

(3) An order made under sub-section (1) may confer powers and impose duties upon the Provincial Government, or officers and authorities of the Provincial Government.

(4) The Provincial Government, so far as it appears to it to be necessary for maintaining or increasing the production and supply of an essential commodity, may by order authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order, such functions of control, as may be provided by the order; and so long as an order made under this sub-section is in force with respect to any undertaking or part thereof -

- (a) the authorised controller shall exercise his functions in accordance with any instruction given to him by the Provincial Government, so however, that he shall not have any power to give any direction inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in so far as may be specifically provided by the order; and
- (b) the undertaking or part shall be carried on, in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

4. Delegation of powers.- The Provincial Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such condition, if any, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Provincial Government or as may be specified in the direction.

5. Effect of orders inconsistent with other enactments.- Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other ^{than} this Act.

6. Penalties.- (1) If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to the Provincial Government:

Provided that where the contravention is of an order relating to foodstuffs which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part, of the property.

(2) The owner of any vessel, conveyance or animal carrying any property in respect of which an order under section 3 is contravened shall, if the carrying is a part of the transaction involving the contravention and if he knew or had reason to believe that the contravention was being committed, be deemed to have contravened the order, and in addition to the punishment to which he is liable under sub-section (1), the vessel, conveyance or animal shall when the order provides for forfeiture of the property in respect of which the order is contravened be forfeited to the Provincial Government.

(3) If any person to whom a direction is given under sub-section (4) of section 3 fails to comply with the direction

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

7. Attempts and abetments.- Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

8. Offences by Corporations.- If the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

9. False statement.- If any person -

(i) when required by an order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any books, account, record, declaration, return or other document which he is required by any such order to maintain or furnish, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

10. Cognizance of offences.- No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Pakistan Penal Code, 1860 (XLV of 1860).

11. Power to try offences summarily.- Any Magistrate or bench of Magistrate empowered for the time being to try in summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898 (V of 1898), may, on application in this behalf being made by the prosecution, try in accordance with the provisions contained in section 262 of the said Code any offence punishable under this Act.

12. Special provision regarding fines.- Notwithstanding anything contained in section 32 of the Code of Criminal Procedure 1898 (V of 1898), it shall be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

13. Presumption as to orders.- (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of Evidence Act, 1872 (I of 1872), presume that such order was so made by that authority.

14. Burden of proof in certain cases.- Where any person is prosecuted for contravening any order made under section 3 which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document, shall be on him.

15. Protection of action taken under Act.- (1) No suit, prosecution or other legal proceeding shall ~~be~~ lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government or any officer under it for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

16. Repeal and saving.- (1) The East Pakistan Control of Essential Commodities Ordinance, 1956 (E.P.Ord.X of 1956), is hereby repealed.

(2) Notwithstanding such repeal, any order made or deemed to be made under the East Pakistan Essential Commodities Ordinance, 1956 (E.P.Ord.X of 1956), and in force immediately before the commencement of this Act shall, until such time as the Provincial Government or ~~an~~ Officer authorised by the Provincial Government issues orders under this Act, continue in force and be deemed to be order made under corresponding provision of this Act; and all

appointments made, licences or permits granted and direction issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act as if this Act had come into force on the date of commencement of the said Ordinance.

20

The East Pakistan Control of Essential Commodities Act,
1956 (E.P. Act I of 1956)

Bill No. 14 of 1956 [4th August, 1956].

"Statement of Objects and Reasons (Appended with the Bill)

The Essential Supplies (Continuance of Temporary Powers) Ordinance, 1955 as enacted by the Government of Pakistan expires from the 25th April, 1956. It provided for some controls to be exercised over production, manufacture, supply and distribution of some essential commodities like drugs and medicine, textiles, spare machine parts, iron and steel materials, cement and paper (including newsprint), etc. On the expiry of the said Ordinance, the Provincial Government promulgated an Ordinance namely the East Pakistan (Essential Supplies) Ordinance, 1956 for the aforesaid purpose. On the expiry of the East Pakistan (Essential Supplies) Ordinance, 1956, another Ordinance namely the East Pakistan Control of Essential Commodities Ordinance, 1956 was promulgated with the same purpose.

As under the Constitution of the Islamic Republic of Pakistan, these subjects namely Trade and Commerce within the Province and production, manufacture, supply and distribution of goods have been included in the Provincial List except Price Control which is in the concurrent list and as these commodities are in short supply and their equitable distribution necessary, it is

considered expedient in public interests to have some control over these commodities for sometime more. With this ~~end~~ in view the power should continue to be vested in the Provincial Government.

The Bill has been framed with these objects in view."

21 The East Pakistan Control of Essential Commodities
(Extension to: the District of Chittagong Hill-Tracts)
Ordinance, 1970

E.P. Ord. I of 1970 [5-I-1970]

Whereas it is expedient to extend the provisions of the East Pakistan Control of Essential Commodities Act, 1956, to the District of Chittagong Hill-Tracts;

Now, Therefore, in pursuance of the Proclamation of the 25th day of March, 1969, read with the provisional Constitution Order, and in exercise of all power enabling him in that behalf, the Governor is pleased to make and promulgate the following Ordinance, namely:-

1. Short title and commencement.- (1) This Ordinance may be called the East Pakistan Control of Essential Commodities (Extension to the Chittagong Hill-Tracts) Ordinance, 1970.

(2) It shall come into force at once.

2. Application of E.P. Act I of 1956 to the Chittagong Hill-Tracts.- The East Pakistan Control of Essential Commodities Act, 1956, shall apply to the District of Chittagong Hill-Tracts.

Bangladesh Gazette Extra., May 2, 1972 (Part 1)

22 Laws Continuance Enforcement Order.

Mujibnagar,
Dated 10th day of April, 1971.

I, Syed Nazrul Islam, the Vice-President and Acting President of Bangladesh in exercise of the powers conferred on me by the Proclamation of Independence, dated tenth day of April, 1971, do hereby order that all laws that were in force in Bangladesh on 25th March, 1971, shall subject to the Proclamation aforesaid continue to be so in force with such consequential changes as may be necessary on account of the creation of the sovereign independent State of Bangladesh formed by the will of the people of Bangladesh and that all Government officials-civil, military, judicial and diplomatic who take the oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service so long enjoyed by them and that all District Judges and District Magistrates, in the territory of Bangladesh and all diplomatic representatives elsewhere shall arrange to administer the oath of allegiance to all government officials within their jurisdiction.

This Order shall be deemed to have come into effect from 26th day of March, 1971.

Syed Nazrul Islam
Acting President.

Azimuddin Ahmad
Deputy Secretary.