

## **Chapter 4: Analysis of the Identified Issues**

### **4.1 Essential Commodities Act, 1955**

4.1.1 The Government by virtue of power conferred upon it under Sec.3 of the Essential Commodities Act, 1955 exercise control on storage and movement of goods through policy interventions. Such interventions and exercise of control paved way for corruption and bribery in large scale.

4.1.2 The attempt to restrict the movement of food grains from surplus regions to deficit regions tend to enhance price variation across the region and affect the cost of marketing and branding. It may also further make domestic prices internationally uncompetitive.

4.1.3 The Act also puts restrictions on interstate sale of agricultural commodities in many states. States like U.P., Orissa, Assam etc, are using entry permit, without which goods are not allowed to enter the consuming state. The ways, means and practice followed towards granting required entry permit to the state is a major source of harassment for dealers wishing to imports goods into the consuming state.

4.1.4 Another practice followed is collecting tax on the entry of commercial vehicle into their jurisdiction, which act as an impediment to inter-state trade. This causes significant losses to the traders due to delays, payment of entry tax and possible bribes (NCAER, 2005).

4.1.5 Bribery and Corrupt practices in large scale is prevalent in the supply and distribution channel of Essential Commodities which is primarily due to lack of adequate legal machinery to deal with such offenders effectively, and meagre punishment in the form of lesser imprisonment period and fine.

4.1.6 This Act does not deal with private marketing, investment in food processing, land ownership and ceilings.

4.1.7 The regulatory barriers inbuilt in the development of storage and processing, hampered the development of effective market institutions and lowered the capacity of agricultural producers to be internationally competitive.

4.1.8 The past experience tells a revealing fact that the Essential Commodities Act (ECA) 1955 has led to excessive control and intervention by the government, which is hampering the participation of private traders in marketing agricultural produce. The Act has conferred enormous discretionary powers upon authorities created under the Act and discourages making larger investments by corporate traders. The penal provisions under Essential Commodities Act, act as dis-incentive to production and distribution of essential commodities by companies.

4.1.9 In short, various provisions of ECA, 1955 conferred enormous monopoly and discretionary power upon the Government and its authorities. The Governments by virtue of conferment of such power under section 3 of ESA, 1955, the Central, State and Union Territories issue, at regular intervals, various control orders<sup>1</sup>.

The said control orders are issued with the intention to ensure adequate supply of essential commodities at an affordable price without much inconvenience to the needy people. But, the reality is that neither there is control over production or control over the supply and distribution of essential commodities. For example, the over production often results in excessive stock of commodities in open space godowns leading to rot and losses. The power conferred upon Government to ensure adequate supply and equitable distribution often resulted in increase in prices and mal distribution of Essential Commodities.

## **4.2 Agriculture Procedure Marketing Acts (APMCs)**

4.2.1 The Committee of State Minister in charge of Agriculture Marketing to promote reforms constituted by Government of India in April, 2011 has identified the following major short coming in the functioning of APMCs<sup>2</sup>.

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<sup>1</sup> To name a few: The Cotton Control Order, 1986; The Drugs (Prices Control) Order, 1995; the Petroleum Product (Maintenance of Production, Storage and Supply) Order 1999; The Edible Oils Packaging Order, 1998; The Sugar (Control) Order, 1966; The Seeds (Control) Order, 1983; The Fertilizer (Control) Order, 1985; The Jute (Licensing and Control) Order, 1961 etc.,

<sup>2</sup> Extracts from the said report.

4.2.2 The Market Committees created under APMC Acts have become monopoly institutions to provide trading ground to sellers and buyers inhibiting other institutions/organizations/private sector company to enter into establishing and developing physical markets based on the requirements of buyers/sellers and the facilities needed for efficient management and competitive price formulation in markets. Consequently, evolving a real free market system has remained a distant dream for the country agrarian economy.

4.2.3 The stipulations such as levy of licences fee, payment of minimum cost for setting up on private markets, prescription of minimum distance between private markets and APMC markets etc., are likely to be prohibitive and may not encourage private markets.

4.2.4 It is also necessary to provide a unified and single point registration system to attract private investment.

4.2.5 Direct procurement needs to be encouraged by way of simplification of its licensing system to provide for rationalization registration mechanism with adequate protection for farmers and a provision of waiver of market fee on it.

4.2.6 Single point market fee system is necessary to facilitate the free movement of the produce inside a State, bring price stabilization and reduce price differences between the producer and consumer markets.

4.2.7 The high incidence of commission charges on agriculture/horticultural produce renders their marketing cost high, an undesirable outcome.

4.2.8 The restriction imposed upon a person or agency from carrying in wholesale marketing activities in the declared market area has led to large intermediation and effectively resulted in limiting market access to farmers and prevented development of a competitive marketing system in the country.

4.2.9 The licensing of commission agents/ traders in the regulated markets has led to a monopoly situation in many states. For new licensing of traders/ commission agents, owning space/ shop

within the market yards has been made compulsory. This acts as a major entry barrier for a new entrepreneur and thus prevents competition.

### **National Policy for Farmers:**

**4.2.10** Further, the National Policy for Farmers 2007 emphasised that efforts should be made to develop a single national market by relaxing international restrictions. All controls and regulations hindering increase in farmers' income should be reviewed and abolished (P.5.10.1.IV)

4.2.11 The said policy 2007, also noted that the role of the Agriculture Produce Market Committees and State Agriculture Marketing Boards needs to be transformed from mere regulatory focus to promotion of grading, branding, packaging and development of markets for the local produce. (P.5.10.1.vii)

### **Report of the Committee on Competition Policy, 2007**

4.2.11 The Report of the working group on Competition Policy constituted by planning commission, Government of India, 2007 has ruled that there is huge potential to advance competition in the agriculture sector both from the demand side as well as from supply side<sup>3</sup>.

## **4.3 The Agricultural Produce (Grading and Marking) Act, 1937**

4.3.1 India is the second largest producer of fruits and vegetables in the world, but only 2 percent of it is processed. The **Agricultural Produce (Grading and Marketing) Act**, empowers the government to fix quality standards. While preparing the quality and purity standards, the provisions of Prevention of Food Adulteration (PFA) Act, 1954, Bureau of Indian Standards (BIS) Act, 1986, International Standards framed by WTO should be taken into account and so that India can compete in the International Market. The Quality standard should be fixed for each

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<sup>3</sup> Para. 4.3.3 & 4.3.4

On the demand side, the model Agricultural Produce marketing Committee Act is likely to provide a framework, which will abolish the 'mandi' tax and permit the framers to sell their produce outside the 'mandi' so that the farmers will get a legitimate free movement of agricultural produce between the States. This is expected to help the agriculture sector to grow faster and also augment rural income and employment.

On the supply side, competition in supply of inputs such as seeds, fertilizers, pesticides and credit may be augmented which will facilitate timely, effective and adequate supply if agricultural inputs in the country and will lead to grater efficiency through more realistic pricing, conservation of inputs use and more rational crop selection.

and every product. There is an urgent need to promote grading and standardization for Agri-products.

#### **4.4 Insecticides Act, 1968**

4.4.1 The pesticides consumption in India is less than the same in other countries like USA, Europe, Japan and Korea. But India is facing the problem of persistence of pesticides in food and agricultural products.

4.4.2 Government has taken various steps to minimize pesticides residues. Certain pesticides were being used indiscriminately which had caused a lot of health problems to the habitants of that particular area. The Pesticide residues could affect human health and also influence the international trade.

#### **4.5 Food Corporation Act, 1964**

4.5.1 Under the present system, the under loading at the despatch point and theft of stock while unloading at the destination on behalf of FCI can be easily camouflaged and shown as rail transit losses. The difference between the economic cost of FCI and the market price also contributes to higher price.

4.5.2 Most of the storage godowns of FCI are very small in size and have, low quality structures. The grains are stored in open space leading to heavy storage losses. A world Bank Report ( world Bank 2001) stated that half of the FCI's grain stocks are atleast two year's old 30 percent of the Stocks are between 2 to 4 yeas old and some grains are as old as 16 years. It is understood that substantial proportion of the grain, mainly wheat and rice, that is meant to be distributed to eligible families under the PDS ends up being sold in the open market by corrupt intermediaries including some dealers who manage PDS outlets.

4.5.3 In the current situation we urgently require a more realistic assessment of storage losses as well as the status of currently stored grains. The activities of the FCI and India's Statutory wholesale marketing arrangements were on, primfacie grounds, considered to be having major impact on competition and price transmission at the farm level.

4.5.4 In this regard, it is worth to refer to the **Working Group on Warehousing Development and Regulation for the twelfth plan period (2012-17)**<sup>4</sup>. It noted that the warehousing capacity available in India in public, Cooperative and private sector is about 108.75 million MTs. This committee further noted that an additional 35 million MTs warehousing capacity is required during 12<sup>th</sup> Five year plan period for storage of all major crops. The storage space available in the country is not sufficient to cater to the procured stocks. As a result, a substantial quantity of food grains is stored in cover and plinth (CAP) storage.

4.5.5 The Grossly inadequate storage capacity available with FCI, CWC & SWCs on the one hand and substantial loss of storage and transit losses of food grains on the other, demand for the entry and involvement of private traders with a view to meet the additional 35 million MTs warehousing capacity during the 12<sup>th</sup> Plan period.

4.5.6 The Private Traders engaged in warehousing have already approached the Competition Commission of India alleging formation or of cartel by FCI, CWC and SWCs (please refer to the case discussed under Chapter 2 Para. 2.8.2). Though the Competition Commission of India rejected the contention of private traders alleging cartalisation among FCI, CWC and SWCs towards hiring godowns, but the discriminatory approach adopted by SWCs and CWCs towards hiring warehousing facility available with private traders primarily with a view to indulge in corrupt practices have come to lime light.

4.5.7 The best way, perhaps, to put an end to this allegation is to bring transparency in the manner of hiring godowns by CWCs and SWCs including from private godown owners. The Warehousing Development and Regulatory Authority created under the Warehousing Development and Regulation Act, 2007

4.5.8 The nature of FCI operations are such that certain purchase centres are opened not so much for procurement as for preventing distress sales. The cost of operating such distress centres should be taken into account while bench marking FCI's costs. There is an urgent need to support and promote crop insurance and weather information to farmers.

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<sup>4</sup> Constituted by planning Commission Government of India, October, 2011.

#### **4.6 The Protection of Plant Varieties and Farmers' Rights Act, 2001**

4.6.1 The Act complies with India's obligations under Article 27.3 (b) of the TRIPS Agreement of the WTO by providing an effective *sui generis* system for protection of plant. The Act conferred upon the farmers nine rights which can be said to have been conferred upon the farmers under the Act including: the rights to save, exchange and (to a limited extent) sell seeds and propagating material, to register varieties, to recognition and reward for conservation of varieties, to benefit sharing, to information about expected performance of a variety, compensation for failure of variety to perform, availability of seeds of registered variety, free services for registration, conducting tests on varieties, legal claims under the Act, and protection from infringement

4.6.2 India's agriculture economy is mainly geared towards domestic markets, and depends largely on traditional varieties cultivated by small and marginal farmers who have less gain from this Act. The legislation should give due attention to national interest such as those of farmers and local communities as well as seed sector. The provisions relating to benefit sharing assurance for expected performance of protected seed and check on cosmetic breeding of crops need to be more precise. The compulsory licensing of rights and the prevention of the import of varieties incorporating the Genetic Use Restriction Technology, make it obligatory for farmers to depend on companies for seeds, At the same time the right to sell seed by the farmer is restricted i.e. the farmer cannot sell seed in a packaged form labelled with the registered name.

#### **4.7 The Seed Act: 1966**

4.7.1 The Section –5 & 7 clearly states that only seed varieties notified by the government need to be registered and sold. Further, there is no provision for transgenic varieties of seeds. There is also no specific provision for compensation provided under this Act, in the event of government notified seeds failed to germinate except through legal recourse.

4.7.2 The Section –17 imposes restriction on export and import of seeds of notified kinds or varieties. The law should provide for imposition of such restrictions only in the interest of farmers and the nation.

4.7.3 As per Sec – 19, any person, who contravenes any provisions of the Act, prevents a Seed Inspector from taking samples etc. shall be punished for the first offence with a fine which may

extend to Rs 500. If the offence is repeated he may be imprisoned for a maximum term of six months and/or fined up to Rs 1,000. The quantum of fine provided under the act is too meagre, hence, may not have adequate impact on violators. Therefore, the same needs to be enhanced substantially. The seed bill 2004 provided that any person who contravenes any provisions of the Act or imports, sells or stocks seeds deemed to be misbranded or not registered, can be punishable by a fine of Rs. 5,000 to Rs 25, 000. The penalty for giving false information is a prison term up to six months and/or a fine up to RS 50,000. This proposal needs to be incorporated under the Seeds Act, 1966.

4.7.4 The farmers are exempt from registering their seed varieties. The seeds produced by farmers have to conform to standards prescribed for commercial seeds. Due to this reason, farmers may find it difficult to adhere to the standards required of commercially sold seeds. Hence, the commercial standards prescribed for farmers producing their own seeds needs to be exempted, for purpose of own or local cultivation.

#### **4.8 Policies:**

4.8.1 **The Agriculture Summit 2005- Reforms for Raising Farm Income** - jointly organized by the Ministry of Agriculture, Government of India and FICCI has clearly and categorically advocated the need for agriculture reforms and policy changes vital for increasing the farm income, productivity and making Indian Agriculture globally competitive. This summit has identified several action points alongwith the concerned Ministry for initiating action under the following major heads<sup>5</sup>.

1. Increase investment in Agriculture sector.
2. Legislature and policy amendments
3. Public Private Partnership.

4.8.2 Despite the said Action Points identified, the Government failed to initiate appropriate action on the following important aspects/areas connected with the aspects and elements of promoting competition within agriculture sector.

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<sup>5</sup> Part. IV, Action Plan, Please refer to Annexure 1A, 1B, 2.1, to 2.6, 3.I, 3.II, 3.III, 3.IV,

1. To scrap the Essential Commodities Act, 1955.
2. To encourage Foreign Direct Investment in Food Retail (Annexure 2.2 of the said report)
3. Rationalisation of Tax
4. To phase out Mandi Tax
5. To increase Public Private Partnership in Agriculture Research and Development.
6. To encourage Decentralisation Procurement and involve private sector and banks in procurement.

#### **4.9 Policy measures related to NCDC**

**4.9.1 Restoration of Priority Lending Loan Portfolio status to the borrowers from NCDC so as to avoid differential treatment among same or similar category of Borrowers.** The mandate of NCDC is to provide financial assistance to cooperative institutions with in a view to undertake related activities of agriculture such as processing, marketing, storage etc. hence, the NCDC deserve concessional financial assistance and treatment from government, RBI and NABARD. The loan facility made available to NCDC under priority Sector portfolio from Commercial Banks at concessional Rates has been withdrawn by RBI w.e.f 1<sup>st</sup> April, 2010.

Keeping in view the need to ensure the survival of existence and development of cooperative institution, there exist a justification for restoration of priority sector loan portfolio facility to NCDC at concessional rates, so as to bring the borrowers of commercial banks and NCDC at par with each other.

#### **4.9.2 Infusion of corpus fund to NCDC with a view to ensure cheaper financial assistance to undertake agricultural marketing, processing etc. related activities**

In addition, NCDC will be in a position to provide cheaper financial assistance to needy cooperative institutions, at par with interest rates levied by commercial banks to individual borrowers, if the central government provide a one time financial grant of Rs. 1500 crore as demanded by NCDC<sup>6</sup> towards its corpus fund during 12<sup>th</sup> Five year @Rs. 300 crore per annum.

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<sup>6</sup> NCDC, in house paper (XII th five year plan (2012-13-2016-17) in respect of restructured Central Sector scheme for assistance to NCDC programmes for cooperative Development.

#### **4.9.3 Application of Uniform subsidy assistance to the borrowers from all states.**

For the purpose of providing financial assistance to cooperatives, the states have been divided under three broad categories i.e. (i) developed states (ii) under developed states and (iii) least developed states by NCDC. The subsidy assistance to the extent of 20-25 percent is made available to cooperatives seeking financial assistance (for marketing and storage etc.) from under developed and least developed states. However, such facility is not extended to cooperatives seeking financial assistance from cooperatively developed states.

Keeping in view the fact that cooperatives in all states mostly represent small and marginal farmers and weaker sections of the society regardless of the state where they are located, it is necessary, in the interest of equity and justice, to extend the said subsidy component facility to cooperative seeking financial assistance from developed states as well.

#### **4.10 Extention of Interest subvention scheme to all Borrowers.**

4.10.1 The Government of India, w.e.f. khariff 2006-07, enabled the farmers to receive crop loans upto a principal amount of Rs. 3 Lakh @ seven per cent rate of interest. The government, during the year 2010-11, provided an additional two percent interest subvention, as an incentive to those farmers who repay short term crop loans as per schedule, which was further enhanced to three percent from the year 2011-12, thereby, ultimately enabling the farmers to an effective rate of interest of four per cent only.<sup>7</sup>

4.10.2 But, the said interest concession and facilitates are made applicable only to Public Sector Banks, Regional Rural Banks and Cooperative Banks.

4.10.3 Such benefits hitherto to made available to Public Sector Banks, Regional Rural Banks and Cooperative Banks need to be extended to the farmers availing financial assistance from money lenders and private banks as well with a view to, inter-alia, minimise and eradicate slowly, the corrupt practices prevalent in the process of extending concession by government.

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<sup>7</sup> Based on a brief note prepared by ministry of Agriculture and Cooperation on “Briefly on Agriculture Credit Flow”. 2011.

#### **4.11 NABARD to provide financial assistance to NCDC from RIDF.**

4.11.1 The Government of India parked massive funds with NABARD under Rural Infrastructure Development Fund (RIDF). The fund generally remains grossly underutilised. The NCDC provide financial assistance to cooperatives, inter-alia, for the purpose of construction of godowns, processing and cold storage units. There is also huge demand for construction of godowns in rural and urban areas so as to meet the current demand. The RIDF parked with NABARD needs to be utilised for the purpose of providing financial assistance to cooperatives through NCDC so as to increase the rural agricultural infrastructural facilities. This will slowly and gradually pave way for eliminating the near monopoly status engaged by FCI, CWC & SWCs towards hiring godowns.