‘Commodities must be controlled’: economic crimes and market discipline in India (1939–1955)

Rohit De*

Introduction

It was a hot afternoon on 10 April 1950, in the town of Chapra in the eastern Indian province of Bihar. As most people had retired indoors to avoid the heat, the women’s clothing store run by Kedar Nath had suddenly become a hive of activity. His munib (accountant) had gone home early on receiving news of the sudden illness of his son, and his shop had been visited by the local Magistrate and the Deputy Superintendent of Police, the leading figures in the district administration. The Magistrate, Mr S. K Ghatak, ordered Kedar Nath to open up his stores and make his registers available, and in this process discovered that Nath had twenty-five more saris than were accounted for in the stock register. Kedar Nath’s relation protested that the saris had been bought that very morning, and that his munib’s unexpected absence had resulted in the stocks not being updated immediately. The district officials were not convinced and Kedar Nath was arrested for not having proper accounts of the clothes in his stock. The district court convicted Kedar Nath for violating the terms of Bihar Cotton, Cloth and Yarn (Control Order) 1948, and the Essential Supplies (Temporary Powers) Act 1946 (ESA), and sentenced him to a fine and a month of rigorous imprisonment.1

What was the offence that Kedar Nath had committed by keeping twenty-five extra saris in his shop that were not accounted for in his register? The goods were neither illicit nor harmful. He was not evading taxes, nor had these goods been smuggled illegally. Why was an incomplete account held to be a criminal offence? Kedar Nath was in breach of the system of economic controls that had come to dominate the early decades of independent India. These controls had been created by the colonial government as an emergency measure to mobilise production for the war effort and to deal with consumer shortages. The controls were unpopular and severely criticised by Gandhi and various nationalist groups. Nonetheless, after independence and the transfer of power, these same emergency measures were adopted by the post-colonial government initially as a temporary measure, and finally in 1955 as a permanent one. It was justified on the grounds that the Indian economy was in a permanent state of emergency.

Beginning with Michel Foucault, scholars have examined how the economy becomes constituted as an object of governance during the development of modern states (Foucault, 1988; Buck-Morris, 1995; Mitchell, 2011). Recent scholarship on South Asia has begun to chart the processes through which the Indian economy was imagined and concretised (Kalpagam, 2000; Goswami, 2004; Bayly, 2012). They have focused on a range of sources including the emergence of statistics, national accounting, the circulation of maps and globes, nationalist tracts on the economy, and the building of railways, but have all neglected to consider the role of law as an instrument of

* Assistant Professor, Department of History, Yale University. Email: rohit.de@yale.edu.

I am grateful to Prabha Kotiswaran, Sharad Chari, Amanda Perry-Kesaris and Diamon Ashiagbor for their comments on this paper. The paper greatly benefited from the contribution of the participants in the Workshop on the Economic Sociology of Law at the School of Oriental and African Studies in September, 2013.

governance. Ritu Birla’s pioneering study of market governance in late colonial India is possibly the sole exception (Birla, 2009, pp. 23–24). Drawing upon the archive of fiscal and commercial legislation enacted in colonial India, Birla traces the emergence of the market as a legal object of regulation. Law standardised market practices and made indigenous commercial practices commensurable with the new order. The new order would institutionalise a new kind of legal subject, the free-willing contracting rational actor.

While drawing on Foucault, Birla and other historians of colonial India have challenged the simple reproduction of a European narrative by pointing out the ‘radical discontinuity’ of colonial governmentality. Colonial governmentality, Gyan Prakash argues, developed in violation of a ‘liberal conception that government was part of a complex domain of dense, opaque and autonomous interests that it only harmonized and secured with law and liberty’ (Prakash, 1999, p. 125). In the absence of mechanisms of representation it functioned alongside brutal coercion.

This paper continues in this vein of post-colonial theory by asking if the advent of the post-colonial state changed colonial governmentality in any way. Specifically, the paper investigates the origins of commodity control legislation in late colonial India and asks why it was instituted as a permanent measure in post-colonial India. Moreover, it examines why a regulatory system was based on a regime of penal law. Surprisingly, despite their centrality to both the economy and daily life, the operation of commodity controls has been largely neglected by historians and social scientists (for an exception, see Brass, 2011). The absence is curious given that commodity controls had the greatest impact on the everyday life of people, as opposed to say industrial controls or import controls, although the latter two have been the more popular subjects of research (Rudolph and Rudolph, 1987; Byres 1998; Frankel 2005; Chibber, 2006).

The paper draws extensively on little-used state archival records, judicial decisions, newspaper reports and private papers of individuals and organisations who were active during this period, to trace these processes from the late colonial state to the early days of the Indian republic. Tracing the genealogy of commodity controls and mapping their quotidian operations, the paper examines how colonial governmentality was transformed with the establishment of elections and representation (Birla, 2007).

Enacted as a temporary measure by a repressive unrepresentative colonial regime during wartime, it was re-enacted and adopted as a permanent measure by successive elected governments enjoying widespread credibility. Unlike traditional accounts of liberal governmentality, the paper shows that the post-colonial Indian state continued to rely on brutal force rather than the self-disciplining of subjects. However, this use of force had to be constantly reconciled with the simultaneous constitution of free citizens in the Indian republic.

Thus, I deploy the commodity control system as an important site to examine how the economy emerges as an object of governance through law in post-colonial India. It brings to the forefront the fact that the bazaar, or the daily local circuits of production, consumption and retail, was a cause of anxiety to the post-colonial state. I argue that it is through law that the state sought to tame the market and consciously shape new standards of ethical behaviour for the citizen-consumer.

The wartime system of controls

Kedar Nath was arrested for violating the ESA and the Cotton Control Order, both of which were products of wartime governance. The colonial state’s goal had always been to control and subordinate India’s economy to meet its needs, and the state had regularly intervened in industry and agriculture (Raychaudhari, Kumar and Habib, 1980; Roy, 2000). However, the nature of this control was transformed with the outbreak of World War II. Economic historians have long pointed out that the nature of modern war increases both the range and intensity of the state’s control over daily life (Tawney, 1943). Beleaguered by the Blitz in Britain, threatened by a Japanese
invasion on the Eastern Front and facing non-co-operation and internal rebellion led by the nationalists, by 1942 the colonial state faced challenges on multiple fronts in India. Indivar Kamtekar has argued that these challenges to its authority prompted a massive expansion of the state through increased military recruitment, the provisioning of allied armies, requisitioning and rationing, and censorship and detention, causing the colonial state to penetrate more deeply into Indian society and economy than before (Kamtekar, 2002). The resignation of the Congress Party from the provincial ministries in 1939 and the mass detention of nationalist leaders in 1942 gave the colonial government space to govern unchecked by the constitutional safeguards provided in the Government of India Act 1935.

As the colony was mobilised for war it became increasingly clear that a greater part of the productive activity had to be geared towards the war effort, and the production of consumer goods had to be limited to essential needs. Under the original dispensation of the Government of India Act, commodity control was a power that was given exclusively to the provinces. This was significant as the provinces were to be governed by popularly elected governments (on very limited franchise) as opposed to the Centre which was under direct control of the British Viceroy. The Central List contained a single entry, 34, which provided ‘development of industries, where development under federal control is declared by federal law to be expedient in public interest’. The Provincial List, on the other hand, provided for ‘trade and commerce within the province’ and the ‘production, supply and distribution of goods and development of industries’.2 The colonial government at Delhi seized control over the economy through the proclamation of a state of emergency under the Government of India Act 1935.3 This was followed by enactment of the Defence of India Act 1939 (hereinafter DoIA), which conferred more extensive powers upon central government. The DoIA empowered the central government to make such rules ‘as appear to be necessary to or expedient to securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or to maintain supplies and services essential to the life of the community’. They required the state to collect information and statistics with ‘a view to rationing of any article essential to the life of the community’. More specifically, the Defence of India Rules provided for the government to regulate or prohibit the production, treatment, storage, movement, transport and distribution, acquisition, use or consumption of any article. The government could prevent an article from being sold or force it to be sold. It could fix prices of any commodity.4

The rules provided for the complete control of markets by the state. Initially, state intervention was limited to controlling the prices of necessities such as medical supplies, food, salt, cooking oil and cotton cloth. The maximum price for the sale of these commodities was fixed according to a formula (Vakil, Anjaria and Lakdawala, 1943). However with Japan’s entry into the war, controls spread to other industrial commodities like iron and steel. The Iron and Steel (Control and Distribution) Order ensured that no person could acquire or dispose of iron and steel without the authority of a licence issued by the central government, or a written order from a bureaucrat called the Iron and Steel Controller. Chronic food shortages and famine conditions in Bengal saw the creation of a Food Department in 1942 and the imposition of controls over all food grains that followed a similar pattern. Finally, faced with chronic shortages of consumer goods, the government set up a Department of Civil Supplies in 1943 that was tasked with creating a comprehensive system of controls over the production and distribution of almost all consumer goods, and with the initiation of measures to eliminate hoarding and black-marketeering (Report of Commodity Commodities must be controlled)...
Controls, 1953). From ballpoint pens to nylon shirts, almost every commodity on the market was 'controlled' by 1947. A provincial minister for food and civil supplies noted that, given the interconnectedness of the market, controls tended to multiply rapidly.

‘Control over foodgrains led to control of fuel, then to sugar and jaggery and onto potatoes, and groundnuts, and then to tamarind, and from tamarind to chillies, and from chillies to onions. Every complaint about shortage or high price of any item brought an excuse for imposing control on that item. Seekers of permits and licenses crowded the multiplying offices and the lines got longer and longer.’

This system gave the government untrammelled discretion to control commodities. The administrative authorities controlled commodities through an elaborate system of licences and permits to control production, distribution, sale, purchase and storage. For instance, to plant rubber, a licence would have to be obtained from the Rubber Board under the Rubber Control and Production Order 1946. Further permits would be needed to sell the rubber in the market at a price fixed by the government, to store it without selling and to move it to another location.

The Defence of India Rules provided for the appointment of a Controller at the provincial level for each commodity and the demands of the licensing system led to the creation of a massive economic bureaucracy. A. D. Gorawalla, a bureaucrat who headed the food rationing system in Bombay at that period, recalled:

‘The role of the general administrator altered with a vengeance. In addition to his other duties he had now become a monopolist, the only wholesale dealer in grain throughout the province with full control over all retail dealings …’ (Gorwala, 1952, p. 16).

While the powers of the officers varied, they were all able to impose significant restrictions on the trade and usage of commodities. There was an absence of any standards or tests to control the exercise of executive discretion as well as the lack of safeguards to protect the interests of those affected. There was little or no protection given to producers, dealers and consumers against the misuse or improper exercise of power by the administrative officer (Jain, 1964, p. 15). There were almost no criteria to be kept in mind while granting licences; most licences could also be cancelled at will. For instance, the Textile Commissioner, who issued licences regulating the movement of raw cotton and cotton cloth, had the power to cancel or suspend licences if the licence-holder had given incorrect information in his application, if he had violated the conditions of his licence, and ‘for any reason’ that the Textile Commissioner believed the licensee was not fit to hold the licence. The Foodgrains Order specifically provided that the licence could be cancelled without giving any notice or reasons to the licensee.


6 These included the Machine Tool Controller under the Machine Tool Control Order, 1941; the Iron and Steel Controller under the Iron and Steel (Control of Distribution Order), 1942; the Sugar Controller under the Sugar Control Order, 1942; the Wheat Commissioner under the Wheat Control Order, 1942; the Gur and Molasses Controller under the Gur Control Order, 1942; the Vegetable Oil Products Controller under the Vegetable Oil Products (Control) Order, 1946; the Paper Controller under the Paper Control (Economy) Order, 1945; the Textile Commissioner under the Cotton Cloth and Yarn (Control) Order and the Textile Industries (Miscellaneous Articles) Order, 1943; the Director of Paper under the Paper Control Order, 1946; the Coal Commissioner under the Colliery Control Order, 1945; and the Controller General of Civil Supplies under the Prevention of Profiteering and Hoarding Ordinance and the Consumer Goods (Control of Distribution) Order, 1945.

7 See, for instance, the requirements under the Cotton Textiles (Dyes and Chemicals) Control Order, 1945.
There were no procedures for a party to challenge the decision to refuse or revoke a licence. The licensing authority could impose virtually any condition on the licensee as well as exempt any licensee from generally applicable conditions at his discretion, and no limits were placed on this power. But, perhaps most significantly, these orders declared that the decisions taken by an administrative officer were final and could not be challenged before a higher authority. This gave tremendous power to the administrators over traders because they could effectively shut down a business, leaving no scope for redress.

The DoIA exemplified colonial legislation. It was a skeletal law that delegated broad powers to make rules upon various administrative bodies, and took away discretion from the legislatures. The Defence of India Rules allowed for various bureaucrats and levels of government to formulate orders to govern each commodity. Several critical commodities such as cotton were regulated by more than one order. The orders also conferred several rule-making powers on lower administrative authorities, such as the determination of licence conditions.

Despite the enormous infrastructure for commodity controls, the system was unable to achieve most of its objectives. Due to the emphasis on meeting wartime production targets, the government was unable to control prices and was confronted with rapid food price inflation. There were also widespread shortages of essential commodities. The system’s most dramatic failure was its inability to prevent the Bengal Famine in 1943, where an estimated seven to ten million people died due to chronic food shortages (Sen, 1981; Das, 2008).

Reviewing the situation a decade later, M. P. Jain pointed out that the policies were often made belatedly after an item had already become scarce (Jain, 1964, p. 23). Policies were markedly ad hoc and improvised without long-term planning. Price control, for instance, was started before controls were imposed on production and distribution, leading to a rapid expansion of hoarding and a black market. A government committee examining the causes of the Bengal famine acknowledged that ‘the poor of Bengal fell victim to circumstances for which they were not themselves responsible . . . there had been an administrative breakdown’ (Famine Inquiry Commission, 1945, p. 107).

Controls and popular support

But it was not just policy design that led to the failure of the controls. Bureaucrats and academics both acknowledged that they were hampered by the widespread lack of public support and sympathy for the government. Newspapers noted that the general public feeling was that the control of prices had mainly been for the benefit of the government in requisitioning stocks for the army and industrial production, and the public was left to the mercy of the black market. Prices rose to astronomical sums. For instance, within six months, prices of tomatoes went up six times and that of mutton increased by 50 per cent. The rationing system did not necessarily guarantee a fairer distribution of goods. As ‘Perplexed’, a resident of the small town of Dhulia, complained in a letter to a newspaper: in the absence of any rules or etiquette with regard to queues in the mofussil, all shops witnessed a ‘great scramble’ and the strong could get their quota.

A study by economists at Bombay University identified the lack of the psychological prerequisites necessary for a successful policy of requisitioning supplies. Requisitioning would require ‘a people
fully conscious of their rights and duties ... but bearing inevitable hardship with cheer’ and an administration that was ‘efficient, incorruptible ...and capable of getting its work done by evoking popular consent and support’ (Vakil et al., 1943, p. 40). However, this could only be achieved if there was confidence between the government and the governed. The breakdown of confidence was blamed upon the wide discretion left to local officers, who proved to be ‘corrupt, oppressive, partial, and unaware of people's needs’ (p. 41). A newspaper correspondent touring Bengal during the famine observed that there had been no preparation of the public mind for rationing, and most people believed, even during the famine, that rationing was unnecessary. Consumers continued to buy on the black market, as evidenced by the multiple advertisements brought out by the government appealing to consumers to desist from doing so. A large majority of the poor were often left under the radar of the rations and controls system. Even in the midst of the Bengal famine, public distribution of goods was done according to the list of landowners and householders, leaving the most vulnerable such as the landless labourers, outside the system.

The controls policy enjoyed dubious legitimacy, as can be evidenced from the numerous cases of evasion, exploitation and non-compliance by ordinary citizens. Wartime controls were not unique to India, but the colonial state was unwilling and unable to give people a sense of stakeholdership in the system. In contrast, the Office of Price Administration in the US, which implemented very similar programmes, was able to base its systems on a network of popular participation. The regulatory authorities were able to convince hundreds of thousands of householders to sign pledges not to buy goods on the black market and to act as vigilantes to check violations (Jacobs, 1997; Hart-Landsberg, 2003). However, despite attempts at reaching out to the Indian public, as evident from the advertisements below, their efforts were unsuccessful.

People were critical of the ration and control system, which seemed to be unsuccessful in removing scarcity or controlling prices, and Indians subverted it with impunity. M. A. Sreenivasan, who oversaw the system of commodity controls in Mysore as Minister for Food and Civil Supplies, emphasised that people resorted to ‘ingenuity, inventiveness and plain unvarnished mendacity’ to evade the controls or to dull their edge. A common tactic to increase rations was the ‘ghost in the ration card’, where a grandmother or aunt appeared as a dependent on multiple ration cards, increasing the number of household members. Abandoned villages appeared to teem with living residents all claiming rations. Anxieties about the multiplication of paper truths led to the government developing new forms of identification and targeting, such as the use of fingerprints on ration cards and stricter residence proofs, which again left people out of the rations ambit (Sriraman, 2011).

The control system was not only manipulated by the citizens, it had also emerged as a major site of governmental corruption. Recent scholarship has suggested that this was the result of the peculiar structure of the commodity controls and the new hierarchy of administrative officers set up to administer them. Corruption arose due to vast untrammelled discretion exercised by petty bureaucrats, and became public as a result of the temporary nature of their posts, which meant they did not enjoy the same degree of immunity as permanent civil servants did (Gould, 2011). This ‘corruption’ was very public, as commodity controls brought the state into the everyday lives of its citizens.

13 ‘Stricken Bengal-IV: Feeding the Other 54,000,000’ Times of India, 26 November 1943, p. 4.
Gandhi, controls and freedom

The strongest critique of controls was articulated by Gandhi, who remained adamant that controls would have to be dismantled in an independent India. Gandhi's campaign against the controls took centre stage immediately after independence, and he declared that his two immediate goals were to restore communal harmony in India and to launch a national campaign to remove food control and rationing.\(^{15}\) Having always expressed deep scepticism about state control, Gandhi argued that controls imposed from above were 'always bad' and made life unnatural. Discussing the subject of cloth control, he recognised that solutions could not be imposed from above but had to evolve from below (Gandhi, 1946, p. 31). Controls bred dependency. Gandhi argued that the country could become self-sufficient in food, but government policy sought to wrap citizens up in 'cottonwool' and did not train them to stand by themselves. Controls for Gandhi were thus a short-sighted measure for the government of free India to adopt; a responsible government would seek to involve citizens in the crisis, improve transport, pay attention to small farmers and improve yields (Gandhi, 1948, p. 15). He emphasised individual responsibility, suggesting that the cloth shortage be met by Indians taking up the spinning of *khadi*. Controls were turning India into an army of idle hands who were likely to turn to mischief.\(^{16}\) The solution lay in the 'public being true to themselves', and not in the hands of a few members of the cabinet (p. 15).

The second line of critique noted that price control disproportionately hurt small farmers. Acknowledging that doing away with controls could lead to rising prices, he argued that government efforts should be geared towards ensuring that this rise in prices benefited the small farmer and would not be taken by middlemen. It was necessary to repeat, daily, the message that the urban populace must sacrifice to help poorer farmers (Gandhi, 1948, p. 15). Similarly, on being warned by an interlocutor that de-rationing could lead to discontent, Gandhi emphasised that it was an empirical fact that there was a cloth shortage. It could not be resolved only through distribution. The only solutions lay in either nationalising the textile industry and working it overtime, or in giving citizens the resources to spin their own cloth. His disfavoured the former as a solution as it did not redress mass poverty in the way that spinning *khadi* did (Gandhi, 1946, p. 31).

The experience of controls for many Indians during the war can be neatly summed up by an observation by Srinivasan: ‘Controls begat hardship, hardship begat resentment, resentment begat evasion, evasion begat blackmarket, blackmarket begat corruption. It was a dismal business.’\(^{17}\)

Controls and freedom in the new republic

Several countries had adopted some form of price controls and rationing during World War II. However, these mechanisms were dismantled with surprising swiftness after the war in the US and western Europe. Given the general level of dissatisfaction with the existing system of controls and the vociferous opposition to it from the Gandhian wing of the Congress Party, one could imagine that commodity controls in India would have gone the same way. An Indian Finance Minister noted that the popular conception of controls was that it was basically wrong, being ‘an anathema to the producers, a bugbear to the consumers; ... and hated by the average politician as an unnecessary interference into people’s lives by the government’ (Agarwal, 1955). Within two months of independence, Dr Rajendra Prasad, the Food Minister, grimly noted ‘that controls were


\(^{16}\) ‘Cotton and Calico for Refugees: Merchants Offer to Mahatma’, *Times of India*, 10 November 1947, p. 11.

\(^{17}\) M. A. Sreenivasan (1960), *Controls and Freedom* (Forum for Free Enterprise, Bombay) N. G. Barrier Collection of South Asian Political Tracts, Centre for South Asian Studies, Cambridge University, Cambridge, p. 2.
becoming increasingly unpopular, in spite of their being administered by a popular government’. The Congress Party Central Committee managed to defeat a resolution demanding immediate abolition of controls by only ten votes. However, apart from a brief period of decontrol in 1948, commodity controls actually became intensified in post-colonial India. Murarji J. Vaidya, President of the Indian Merchants Chamber, a business lobby that was very close to the Congress leadership, expressed his puzzlement that countries that were more directly involved in the war, like the UK, and those that had suffered severe ravages, like Germany and Japan, were devising ways to remove various economic controls, while India remained the ‘only free and democratic country’ that sought to continue and extend the controls in various spheres of activity (Vaidya, 1960, p. 3).

Extended in 1946 as a temporary measure in the face of a continuing economic crisis, commodity controls became incorporated as permanent practice with the enactment of the Essential Commodities Act of 1955 (ECA). The wartime commodity controls system operated as an emergency measure. With the end of the war, the emergency was officially rescinded in April 1946. This would have meant that all existing controls would lapse and the responsibility for commodity controls could only be handled by the provinces. By this time, an interim government headed by Nehru held office in Delhi, and preparations for independence were under way.

The government asked the British parliament to amend the Government of India Act to temporarily grant the central legislature the power to make laws with respect to trade and commerce. The Central Legislature went on to replace the old regime of controls with the Essential Supplies (Temporary Powers) Act of 1946, the Act that Kedar Nath was charged under. The Act was time-bound, as the powers of the central government to regulate commodities was expected to lapse in five years, by which time it was expected that the economic emergencies caused by high prices and chronic shortages would have been resolved. The ESA empowered the government to regulate or prohibit the production, supply and distribution, and trade and commerce of any commodity designated as an ‘essential commodity’ as far as it seemed ‘necessary or expedient’ to maintain supplies or secure its equitable distribution at fair prices. Mirroring the DoIA that it replaced, through a system of licences the ESA allowed the central government to regulate the manufacture and production of any commodity; regulate the expansion of cultivable land; control prices; regulate the storage, transport, supply and distribution of commodities; limit the storing of a stock; require the sale of goods to a particular category of persons; and regulate the prohibition of any transactions which were in the opinion of the authority detrimental to the ‘public interest’. Controllers were appointed for each commodity, with extensive powers, including the responsibility for collecting information and statistics. They had the right to inspect the accounts, records and receipts of persons engaged in the production of or trade in essential commodities, as well as to search premises without a warrant.

The government sought to Teflon-coat the ESA to protect it from legal challenges. The ESA provided that orders made under Section 3 had effect irrespective of its inconsistency with any other law. It also sought to insulate the orders from judicial review, by providing that no order

---

20 India (Central Government and Legislature Act), 1946.
21 Temporary, as the powers of the central government to regulate control commodities was initially limited until 1950.
22 ESA 1946, s. 3(1).
23 ESA 1946, s. 3(4).
24 ESA 1946, s. 6.
made under the Act could be called into question in any court. The Act also gave immunity from legal proceedings to officers and the government for any damages that could be caused by any action done in furtherance of an order under the ESA. So in effect there was little incentive for administrators to take commercial or trading interests into account, as they would not be liable even if a decision caused substantial economic losses.

The ESA was expected to lapse by the end of 1949, but crises over shortages and inflation were used by the government to periodically extend its life. The assumption remained that this was merely a temporary solution, and the Constitution of 1950 replicated the government of India formula of delegating the powers of commodity controls to the provinces. To tide over the immediate crisis, an exemption was provided under Article 369 of the Constitution, which provided that the commodities covered by the ESA would be a subject on the concurrent list for five years. These included all food products, cattle fodder, cotton textiles, raw cotton, cotton seeds, coal, and iron and steel. As the expiry date of the ESA approached, the government appointed a committee, headed by a member of parliament but comprised entirely of bureaucrats, to examine existing controls and streamline the system. The Commodity Controls Committee examined representatives from state governments, industries, chambers of commerce, economists and trade unions and concluded that controls of all essential commodities had to be regulated on an all India basis (Commodity Controls Committee, 1953, p. 18). Acknowledging evidence that controls could and did also cause harm, the Committee argued that they should be retained because they could also be used for a positive purpose. The Committee recommended that the Constitution be suitably amended to confer upon the central government reserve powers to control any commodity, and that parliament enact a comprehensive permanent law on the lines of the ESA. Parliament acted upon the advice, amended the Constitution and enacted the Essential Commodities Act in 1955.

The economy as permanent emergency

How did an emergency wartime measure by a colonial government become a routinised element of the post-colonial republic? There is now a considerable body of scholarship that has identified the ‘state of exception’ as a characteristic of the modern state that allows the government to expand its powers over its citizens (Agamben, 2005). The Indian Constitution itself institutionalised emergency under the constitution by incorporating provisions that explicitly authorised the use of extraordinary powers and the suspension of civil liberties during a designated time period (Kalhan, 2011). However, the scholarship on emergency has largely focused on political crisis and overtly political actions such as the detention of political prisoners, restrictions of free speech or the dismissal of elected governments (Austin, 1999; Hussain, 2003; Kalhan 2006). Controls in India assume a different dimension, not just because of their framing as a politically neutral question about the economy, but also because the emergency was seen as a permanent condition arising due to an underdeveloped economy. The Constitution explicitly empowered the President to declare a state of financial emergency if he or she were satisfied that there was an economic situation where the financial stability or credit of India was threatened.  

25 ESA 1946, s. 14(1).
26 ESA 1946, s. 16(2).
28 The Constitution (Third Amendment Act) 1954.
29 Constitution of India 1950, art. 360.
The enthusiastic retention of controls by Nehru's government was the combined product of how the post-colonial state's relationship with its citizens was imagined and the adoption of centralised economic planning as the main instrument of managing the economy. The Indian Constitution guaranteed 'economic justice' to all its citizens. The Governor-General, on the eve of independence, reminded the Assembly that it was their responsibility to ensure the happiness and prosperity of the people and to 'provide against future scarcities of food, cloth and essential commodities and to build up a balanced economy'. Moving the 'Objectives Resolution' in the Constituent Assembly, Nehru acknowledged that the first task before the Assembly was 'to free India through a new Constitution to feed the starving people and clothe the naked masses'. Another member reflected that the Constitution needed to ensure food and cloth for the villagers, as it was these necessities that led to the demand for swaraj.

These statements acknowledge that the independent republic, unlike its colonial predecessor, would ensure that its citizens received the basic amenities of life. However, within the Constitution this was cast as the responsibility of the state rather than a right of the citizen to food or clothing. The Constitution placed the onus upon the state to direct its policy towards ensuring that the ownership and control of the material resources of the community were distributed to serve the common good. It also required the state to ensure that the operation of the economic system did not result in the concentration of wealth and means of production to common detriment. This provision arose from a concern over the provision of daily commodities. The original wording of the provision had read that the state would ensure 'that the operation of competition shall not be allowed to result in the concentration of ownership and control of essential commodities' (emphasis mine). It was now the duty of the state to intervene in the quotidian life of markets.

However, the framing of the problem as a responsibility rather than a right meant that the citizens were unable to make these claims through the Constitution (Birchfield and Corsi, 2010). As Ananthasayanam Ayyangar complained:

‘Food and clothing are essentials of human existence. Where is a single word in the Constitution that a man shall be fed and clothed by the state? . . . We have not yet taken any lesson from the 35 lakhs of people who died in the Bengal famine? Is there a single word in the Constitution that

---

30 The Objectives Resolution adopted by the Constituent Assembly in 1946 stated: ‘WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political.’
31 Lord Mountbatten, Constituent Assembly Debates, Friday, 15 August 1947.
32 Jawaharlal Nehru (United Provinces), Constituent Assembly Debates, Wednesday, 22 January 1947.
33 Moturi Satyanarayana (Madras: General), Constituent Assembly Debates, Tuesday, 9 November 1948. T. Prakasam (Madras: General), Constituent Assembly Debates, Monday, 22 November 1948.
34 Constitution of India, 1950, art. 39(a).
35 Constitution of India, 1950, art. 39(b).
37 The current Right to Food campaigns in India provide an interesting contrast to the discussion on controls. A network of non-governmental and civil society groups began a campaign in the late 1990s to recognise that every citizen has a fundamental right to be free from hunger and to nutrition and the realisation of this right required not just equitable food systems, but also entitlements to job security, land reform and social security. The Supreme Court of India in 2001 found the Right to Food as a justiciable right, setting into motion legislation guaranteeing employment, the universalisation of child development services, several nutrition-related schemes, social security arrangements, etc. While these entitlements were claimed from the state, they were articulated through civil society groups and support was mobilised outside parliament through conventions, village-level mobilisation, rallies and public hearings.
imposes on future governments that nobody in India shall die of starvation? What is the good of saying that every man shall have political rights . . . and so forth, unless he has the wherewithal to live?\(^{38}\)

The welfare state that would emerge as a result of this was directed from the top, towards the perceived needs of the people, rather than by their actual demands made through elected representatives or other forums. Therefore, controls did not need to have popular support and appreciation to be continued. Partha Chatterjee, in his analysis of why post-colonial India adopted planning, points out that the state acquired its representativeness not just through elected representatives but also by leading the nation to economic development. Thus, the sovereign powers of the state were directly connected to the economic well-being of its citizens (Chatterjee, 1993, pp. 203–204). What was good for the economic well-being of the people could therefore contradict and supersede the preferences the people expressed through elections, the media and the market. As Chatterjee argued, planning emerged as a ‘crucial institutional modality by which the state would determine the material allocation of all productive resources within a nation: a modality of power that was constituted outside the political process itself’ (p. 204).

The Planning Commission, in its First Five Year plan, argued that the free market was not a dependable mechanism to provide essential commodities in an economy that was likely to be under pressure from shortages and international fluctuations. Thus, post-colonial India was imagined by its governing classes as a ‘needy nation’, permanently afflicted by an essential lack, in this case of consumer commodities (Roy, 2006). This lack would only be met at some point in the distant future and in the meantime would require the state to take extraordinary measures. While the original justification for controls had been to ensure an equitable distribution of scarce commodities, they tended to perpetuate even when scarcity had ended. For instance, even when sugar production increased significantly, the control on sugar was retained on the grounds that it had to be exported to earn foreign exchange (Shroff, 1960, p. 5).

The Parliamentary Select Committee on Commodity Controls was convinced to retain controls in a permanent form by the ringing endorsement it received from the Planning Commission. The Planning Commission argued that controls provided a means by which the government could balance various sectional interests, by controlling the limit of freedom of action on certain classes and providing incentives to others. The Parliamentary Committee on Commodity Controls felt it could do no better than to restate the Planning Commission’s reasons (Commodity Controls Committee, 1953, p. 16). It noted that the origins of the controls in wartime obscured the role they could play in the planned economy, such as ‘safeguarding the minimum consumption standards of poorer classes, preventing excessive or ostentatious consumption by the well to do, and facilitating the country’s programme of direct utilization of unemployment manpower for investment’ (Planning Comission, 1951). The argument made was similar to those used to justify the continuation of various structures of colonial government, such as the army and the police, into post-colonial India. It suggested that the institution in itself, in this case economic controls, operated within a ‘rational universality’ which had been misapplied in the colonial state but could now be utilised for development (Chatterjee, 1993, p. 204).

For controls to be legitimate, they had to stand above sectional interests and the normal processes of politics, and be directed by a a neutral rational body of experts rather than by parliament. The non-involvement of politicians, civil society and community groups in the process of implementing controls make it a striking departure from the experiences of rationing and controls in other democracies like the US (Hart-Landsberg, 2003). Even the opposition Socialist Party, which itself

\(^{38}\) A. Ayyangar (Madras: General), Constituent Assembly Debates, Tuesday, 9 November 1948.
advocated commodity controls, pointed out that people had lost their faith in the desirability and efficacy of the present system of controls, was unable to link it to any ‘cherished objectives’, and was indifferent to or actively disregarded the control regulations. This was attributed to the centralised bureaucratic nature of controls, which the Socialists promised to remedy, by devolving authority from government departments to people’s representative committees and associations.39

The Bihar Cotton (Textiles and Yarn) Order 1948 under which Kedar Nath had been arrested, and whose legality he challenged, provides a typical example of the byzantine systems of regulation. The Order had been passed in the immediate aftermath of the war, when certain parts of the country faced a severe shortage of cloth. The situation grew so bad in the major cities that there were rumours of cloth being stolen from shrouds and coffins and fear of cloth riots outside shops.40 The Order sought to confer the power of control and regulation of every phase in the production of cotton cloth and yarn on the office of the Textile Commissioner. The aim of the order was to achieve an adequate supply of yarn to the handloom industry by requiring the compulsory sale of yarn by manufacturers; it limited the installation of power looms; controlled the installation of power spindles; set the prices of cloth; and ensured its distribution across the country. To prevent hoarding, the Commissioner could set the maximum quantity of cloth and yarn to be possessed by a producer or dealer, as well as the maximum period of time for which he could possess it. To ensure control, the date of production was to be marked on the cloth and yarn. The country was divided into zones, and cotton cloth could be moved between the zones only with a permit from the Textile Commissioner. The creation of a new permit regime allowed the entry of new players into the cotton trade, who were able to secure the governmental permits (Commodity Controls Committee, 1953, p. 81). In some cases these new retailers were able to resell these licences to those they had displaced, thus reducing the margins of profit. The entry of new players meant that the dealers in older important centres of distribution, such as Bombay, Calcutta, Delhi and Kanpur, lost their positions, and the trading networks built by them across the country collapsed (Agarwal, 1955, p. 98). The complicated system of price and distribution controls, along with the displacement of normal trade channels, caused severe difficulties to even those traders who had got the licences. As a leading economist remarked: ‘the temptation of evading the control orders and the difficulty in comprehending them was so great that there was hardly a trader who either knowingly or unknowingly evaded the controls. To abide by the regulations would have meant they would have been wiped out from their business’ (Agarwal, 1955, p. 102).

The complexity of the orders was such that even the parliamentary committee reviewing commodity controls had difficulties in obtaining a list of all notifications issued under various orders. Several administrators admitted to parliament that even they were not sure of the latest position on notifications on the commodities they controlled (Commodity Controls Committee, 1953, p. 35). The order generated enormous increases in paperwork for traders. For instance, the mills in Bombay city had to submit 577 forms a year to a variety of authorities, including the Textile Commissioner, the Factory Inspectorate, the Labour Department and the Registrar of Companies. The failure to submit accurate and timely returns would result in fines (p. 82).

The new economic criminal

The controls system created a new form of crime in India that later came to be described as a socio-economic offence (Law Commission of India, 1966). The initial list of these offences comprised

---

39 Controls: End or Mend? A Socialist Publication (1951), N. G. Barrier Collection of South Asian Political Tracts, Centre for South Asian Studies, Cambridge University, Cambridge.

hoarding, black-marketeering, tax evasion, food adulteration and illegal trading in licences and permits. The newness of these offences is apparent from their absence in the Indian Penal Code, which as a model utilitarian legislation had attempted to list all possible offences in the mid nineteenth century. The only economic offences that appear in treatises and commentaries before World War II are various types of betting and gambling, food adulteration and the counterfeiting of currency.

These were offences that were calculated to prevent or obstruct the economic development of the country (Santhanam Committee, 1969, p. 54). The victims here were the state and a section of the consuming public, and the crime was one that was perpetuated by fraud and not force. The attitude was best articulated a few years later by the Law Commission headed by Justice Gajendragadgar, who, drawing an analogy with the need to defend every inch of territory in war, stated that ‘in an economic crisis or in a massive effort to build up a healthy social structure, the purity of every grain had to be protected and every dot of evil wiped out’ (Law Commission of India, 1972, p. 5). Recommending greater punishments for violating the ECA, the Law Commission would argue that these offences affecting the health of the entire community had to be crushed, and the legislative ‘armoury’ for fighting socio-economic crimes needed ‘weapons’ that were sharper and more effective than those used for ordinary crimes.

The controls system was undergirded by an exceptional regime of criminal law. These arose from the belief that these ‘socio-economic’ criminals needed stronger deterrence than fines and public shaming. Indeed, a socio-economic offence was characterised as one that was not challenged by the ‘organised moral sentiments’ of the community, because the crimes were often complex, and public agencies like the press were themselves controlled by businesses involved in violating these laws.

Violation of an order made under the ESA and the ECA was punishable by imprisonment for three years and a fine or both, and the punishments were increased through periodic amendments. As Kedar Nath’s assistants found out, attempt or abetment of this contravention was also deemed punishable. Property, like the saris found Kedar Nath’s shop, could be forfeited. In recognition of the fact that companies were likely to try and contravene such orders, the controls regime made all directors, managers and officers of a corporate body liable for a contravention unless they could prove that this took place without their knowledge or negligence. In cases of violation, deviating from the Indian Evidence Act, the burden of proof was shifted to the accused. Perhaps most ominously, those charged for violating control orders would be subject to a summary trial under the Criminal Procedure Code. Ordinarily, a summary trial was only provided for in cases where the value of goods was less than Rs 200 and the maximum punishment was less than imprisonment for two years. A summary trial was ordinarily used in minor offences, where, in the interests of speedy resolution, several procedural requirements could be ignored. The accused, for instance, would only have one opportunity to cross-examine witnesses and limited rights of appeal.

Continuing leakages and failures of the controls system led to the parliament amending the law several times to increase the punishment of offenders. An examination of just one of these debates throws light upon why the state deemed it necessary to take extraordinary measures with these offenders. The ESA was amended in 1948 to cover cases arising from violations of orders involving

---

41 This is evident from the classification of offences under the Indian Penal Code, 1860.
42 ESA 1946, s. 4.
43 ESA 1946, s. 9.
44 ESA 1946, s. 14(1).
45 ESA 1946, s. 12.
food grains and textiles. The amendment provided that in such cases a sentence of imprisonment would be obligatory and exceptions could only be made if the judge provided a reason in writing. Further, any vehicle or animal used for smuggling food grains or textiles could be confiscated.46

The amendment, which was successfully passed, sought to remove all judicial discretion in sentencing. This was in response to magistrates having given light sentences in most cases involving controls infringement. Prabhu Dayal Himatsingka, a Marwari lawyer from Calcutta and one of the few opponents of the amendment, was unable to convince the house that this failure of the courts to administer strict punishment indicated that public opinion in favour of the controls was not strong enough.47 Other members pointed out that the real cause of the crime was not the offence committed by people but the shortage of goods. These shortages, coupled with the poor quality of available products, even in the ration shops, forced people to buy from the black market.48 Could a father buying food for his children from the black market be considered a criminal?

Putting in place compulsory sentencing placed all violations of controls at the same level, so an industrialist forgetting to file a return, a small trader moving goods without a permit, and a buyer trying to obtain foodstuff from the black market, were to face equal jail time. Voices of dissent had noted that, in practice, action was mostly taken against ‘small dealers and helpless buyers’ who did not have the capacity to bribe the police.49 The desire to punish offenders that motivated the law would not end the ‘open’ black markets but merely drive them underground, forcing the public to take greater risks and pay more for the same goods. Banarsi Prasad Jhunjhunwala, another Marwari member of parliament, recounted how in the midst of a thriving black market in cloth in Bihar, the anti-black-marketeering officials arrested a poor widow who sold saris to women from her home rather than targeting the prominent black-marketeers.50 The President of the Rationing Employees Union in Uttar Pradesh warned the house that in his experience the majority of the people convicted were poor peasants who were transporting small quantities of grain from one place to another.51

As the amendment was passed by an overwhelming majority, a furious member of the Constituent Assembly reminded the house that other countries had imposed the death penalty for violating controls and urged the government to increase the period of compulsory imprisonment to seven years. Exasperated at the multiple violations, he noted that these criminals were particularly amoral and not affected by the threat of imprisonment. As they evidently cared more about money than about the prospect of serving jail time, the government should devise ways to confiscate their property.52

47 Marwaris were an influential mercantile community in India. Prabhu Dayal Himatsingka (West Bengal: General), Extract from the Constituent Assembly of India (Legislative) Debates, 25 March 1949, Essential Supplies (Temporary Powers) Act, Ministry of Law, File 38-XXII/50-L [NAI].
49 Naziruddin Ahmad (West Bengal: Muslim) Extract from the Constituent Assembly of India (Legislative) Debates, 25 March 1949, Essential Supplies (Temporary Powers) Act, Ministry of Law, File 38-XXII/50-L [NAI].
Conclusion

Kedar Nath was ultimately acquitted on an appeal before the High Court of Patna, after having spent a few weeks in jail and several months litigating in the courts of law. Kedar Nath was not alone in his predicament. He was one of thousands who were arrested under the ESA, and one of the hundreds held for violation of the Bihar Cotton Control Order. Even more than the convictions, the ESA opened up shops and businesses to the intimate gaze of the state. Thus, an officer could walk into a shop and order the production of accounts, stop a traveller on a road and inspect his bags without a warrant, and accept at face value the charge that a shopkeeper had sold an item above the designated price.

Commodity controls had originally been devised under an administrative order to meet specific needs of the war front. The nationalist politicians criticised the controls for the distortions they caused to the economy and daily life. However, controls came to be rehabilitated and legitimised through the constitution by the same nationalists when they assumed power.

These draconian measures were institutionalised through permanent legislation on the grounds that it was for the greater good of the economy. They sought to not only address the question of scarcity and equitable distribution, but also saw controls as a tool for planning and development. Thus, the government was able to ignore the widespread protests, disobedience and dissatisfaction of a wide section of the population that it was supposed to represent.

However, as the above accounts show, despite draconian enforcement, controls were often breached by traders and consumers. Reflecting on their lack of success, leading economist D. R. Gadgil addressed the government in 1947, reflecting that despite having had the same formal structures of controls as other important countries, controls in India had operated very differently, yielding results not experienced elsewhere (Gadgil, 1947, p. 3). Gadgil argued that this arose from the ‘peculiar attitude’ taken by people towards control, and the lack of an educated public opinion. He expressed puzzlement that many people, despite not being fans of laissez faire, believed that the ills of the economy would be resolved by putting an end to the regime of controls. No one seemed to realise the direct connection between the continuance of wartime controls and the operation of planned economic development.

He acknowledged that the various stakeholders were vulnerable to charges that made them unable to comply with controls: politicians and administrators were inefficient and dishonest, traders lacked moral strength and the public had no strength of character to live under such a regime. Thus, the people of India had to be educated and public opinion moulded to make controls work.

Thus the need for deterrent penal statutes that brought a wide range of people under their ambit and made it hard to escape conviction. This was to be coupled with a campaign of public education reminding people of their responsibilities. The thousands of Indians who headed to cinemas every week were made to watch a series of documentaries, including one titled Rights and Responsibilities, that sought to educate new Indian citizens. After being warned against hoarding, tax evasion and the black market, the viewers were reminded by the disembodied voice-over that India was in the throes of war–economic war–and citizens needed to co-operate with the state to keep the state’s morale high.

---

54 Province of Bihar v. Chedilal Sharma; AIR 1950 Pat 95.
55 Joylal Agarwalla v. Union of India; AIR 1951 SC 484.
56 Rights and Responsibilities (Films Division of India, 1951).
For a historian of post-colonial India, the role of the state and social relations in constituting the market is hard to miss. Surprisingly, while the scholarship on Indian political economy acknowledges the role of the state, it pays less attention to its modalities and largely ignores the workings of law. State control of the economy has been predominantly studied through econometrics, statistics and the analysis of plans and budgets.

The establishment of market control through law is not merely the Indian re-enactment of Weber’s observations on the role of a ‘rational’ legal system in the emergence of modern capitalism. Three features distinguish the post-colonial experience with commodity controls from experiments in the West. First, while commodity controls were an almost universal feature during World War II, in almost all cases they were withdrawn quite rapidly in peacetime. In India, they were brought in as a permanent condition. Second, a system of licensing and regulation was undergirded by fairly draconian criminal law. This is significant, because regulating the economy was no longer viewed as the domain of the private, but self-consciously brought under ‘public law’. Finally, the controls had limited success in producing market discipline, as can be seen from widespread criticism, continuing shortages and the thousands of cases of evasion and avoidance.

This limited success reveals the divergence that continued to exist between the system of regulation and circulation that the state desired to establish and the local market conventions. This divergence was not resolved through the institution of universal adult franchise. Recognising the divergences between idealised market practices and reality, the only solution was a permanent regime of criminal law.

References


vakil, c. n., anjaria, j. j. and lakdawala, dansukhlal tulsidas (1943) price control and food supply with special reference to bombay city. bombay: n. m. tripathi.