



**COVID-19 AND THE WHITE-COLLAR CRIMES: ANALYZING THE ECONOMIC
NOSEDIVE AND THE RISE OF FINANCIAL CRIMES**

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Abstract

The term White Collar crimes has been defined by Edwin Hardin Sutherland as “*crimes committed by people who enjoy the high social status, great repute, and respectability in their occupation.*” Such crimes are primarily influenced by the economic framework prevailing in the nation. The Covid-19 pandemic has brought to world economy at a standstill and two consecutive Covid-19 waves the Indian economy has crumbled into pieces. There has been a constant pressure on achieving business targets wherein even small-scale sales companies have started falsifying accounts, resorted to fraudulent malpractices in order to meet the financial targets. Furthermore, with huge amount to economic packages being rolled out by the government in order to stimulate the economy provides a greater opportunity for the white-collar criminals to commit any form of financial crime. Furthermore, with increasing travel restrictions and constant closure of the offices, a necessary oversight over the business activities has been become difficult. Pursuant to the same this paper deals with a co-relational study between the Covid-19 Pandemic and increased threat of white-collar crimes in India. The paper concisely relates how factors like economic pressure and requisite opportunity created by the pandemic have become a major path for financial crimes. Furthermore, this paper in order to create a theoretical perspective features different enactments of Indian laws which discuss the discipline of these kinds of crimes. The author will at last close the article with his own ideas and suggestions to curb the growing white-collar crimes.

Keyword: *White collar crime, India, financial crimes, occupation, Economy, Covid-19, Pandemic.*

I. INTRODUCTION

The pandemic of COVID-19 has brought unprecedented changes on the economic front. With businesses and finances being disrupted due to the lockdowns, curfews, bandhs etc, and the Government is making efforts to pump in huge amounts of money back into the economy, India is still afraid of the rise in economic offences. “The pandemic has brought dramatic spikes in demand to some sectors, for example medical devices, pharmaceutical products, e-commerce, food retail, cleaning, and funeral services. The demand for sanitary masks, breathing devices, and medicines has also risen notably. As governments seek to shore up their defences against the pandemic, procurement procedures in some countries have been relaxed.”¹ With increasing cases of corona virus, we have seen hoarding and black marketing of essential supplies such as oxygen, remdesivir and other medicines. The problem is not limited to medical supplies but extends to the entire supply chain. The *Corruption Perception Index*, 2019 by the Transparency International rated India at 80th with the score of 41 points, however in the year 2020 the rank slipped to 86th with the score of 40. Hence there is a likelihood that with the increasing magnitude of the pandemic and its effect on the public health and economy, along with the substantial governmental expenditures, will fuel economic offences including white collar offenses.²

As the entire country comes to standstill, most of the regulatory investigations have come to a halt, same is the case globally also. Much of the legal machinery is involved or engaged in fighting the pandemic. Hence it cannot be denied that the law enforcement agencies or authorities have slowed down the scale and pace of conducting regular investigations. In fact, many High Courts in India has come up with the Standard Operating Procedures (SPOs) asking law enforcement agencies to refrain from taking coercive actions. For e.g., “the High Court, in the SOP issued for district judiciary, had stated that no coercive steps should be taken, ex parte orders passed, or warrants issued against the party or witnesses in the absence of any representation and the matters be liberally adjourned.”³ Therefore there are many inevitable delays owing to the various

¹ UNDOC, THE IMPACT OF COVID-19 ON ORGANIZED CRIME, (July 2020)

² Gireesh Chandra Prasad, Pandemic may trigger rise in corporate fraud, warn experts, Live Mint (Feb. 11, 2021), available at: <https://www.livemint.com/news/india/pandemic-may-trigger-rise-in-corporate-fraud-warn-experts-11613066872850.html> [Last accessed on 19-May-21 at 04:06:15 pm]

³ In relation to police investigations in crimes in India, see e.g., “Telangana High Court modifies SOP for civil, criminal cases” The New India Express (Dec. 20, 2020 available at:

procedural and investigative hurdles which are resulting in delay of investigation of White-Collar crimes. Similarly in other jurisdictions also, practical difficulties such as remote access to evidence and documents due to court closures, protocols etc has delayed investigations.⁴

Therefore, it is safer to say that owing to the pandemic and the consequential difficulties, increment in white collar crimes or other organized crimes poses as a great threat to the already struggling economies, including India, and various law enforcement agencies in the post pandemic era. This Article aims to analyze the various factors that encourage the corporate and financial crimes during the pandemic. It seeks to explain how in the recent past there have been many incidents which demands stricter response from the governmental authorities and the public at large. The Section II will focus on various aspects that abets or create environment for the commission of white-collar crimes, financial crimes, organized crimes etc. Section III will discuss the various rules and regulations that are amended or introduced in response to the pandemic and also discuss the various factors affecting law enforcement. Section IV presents few recommendations followed by Conclusion at last.

II. FACTORS ABETTING CRIMINAL ACTIVITIES DURING PANDEMIC

As already discussed, that the pandemic has already devastated the economic activities and also the law enforcement process across the globe, but this is not something unpredictable. Warnings have come from many quarters, including OECD⁵, that the pandemic will provide a conducive environment for crimes like corruption, money laundering, fraud and anti-competitive practices etc and countries engaged in the anti-corruption efforts were appropriately advised. There are various factors which may

<https://www.newindianexpress.com/states/telangana/2020/dec/20/telangana-high-courtmodifies-sopfor-civil-criminal-cases-2238583.html> [Last accessed on 19-May-21 at 04:06:15 pm]

⁴ In relation to the United Kingdom's Serious Fraud Office, see, e.g., Kate Beioley and Matthew Vincent, "SFO Struggles to Process Evidence During Pandemic", Financial Times (May 11, 2020), <https://www.ft.com/content/db77c26c-937d-4632-b5d6-b1fc491df895>. See also Kara Brockmeyer, Andrew M. Levine, and Philip Rohlik, "Tips for Handling Internal and Government Investigations When Everyone Is Working Remotely," FCPA Update, Vol. 11, No. 9 (Apr. 2020), <https://www.debevoise.com/insights/publications/2020/04/fcpa-update-april-2020>.

⁵ OECD Statement, "The Global Response to the Coronavirus Pandemic Must Not Be Undermined by Bribery" (Apr. 22, 2020), <https://www.oecd.org/corruption/the-global-response-to-the-coronavirus-pandemic-must-not-be-undermined-by-bribery.htm>; see also OECD, "Policy measures to avoid corruption and bribery in the COVID-19 response and recovery" (May 26, 2020), https://read.oecd-ilibrary.org/view/?ref=133_133216-hn3bqtlvk&title=Policy-measures-to-avoid-corruption-and-bribery-in-the-COVID-19-response-and-recovery

encourage the commission of white-collar crimes, financial crimes and other crimes to evade the drawbacks of the pandemic; few of these factors are discussed below.

(i) **Financial Misrepresentation and Window Dressing**

The pandemic has brought the liquidity crunch for many including the corporations. The prevalent curfews, lockdowns and a lack of health facilities have created an insecurity which has led people into saving money and hence the overall spending and commerce has reduced. This has led already hit corporations to miss their targets and record lower sales, pay employees, rents etc without earning much. The Businessmen too are suffering because of these factors. Hence there is enough motivation for companies to embezzle funds and divert them to different use and accordingly manipulate financial statements. Similarly, corporations may also misrepresent their position to show stability in the times of pandemic and to attract more investments. There is a increased likelihood on manipulations of accounts and evasion of disclosure requirements.

(ii) **Integrity Lapses**

Another factor for the rise of the white-collar crime incidents may be due to the employees working in corporations. There are increased chances of employees indulging into short term gains by compromising the interests of corporations by taking advantages of the protocols or work from home. Employees may indulge into insider trading or stealing proprietary data, giving unauthorized access to anyone for money etc. “For instance, under the current circumstances, IT staff will have access to board meetings, which hitherto was restricted and perhaps conducted behind closed doors, given that these meetings are now being conducted through video conferencing and hence could involve the presence of IT and support officials for logistical purposes. Interestingly, while the notion of ‘insiders’ in an organisation typically conjures up the image of key managerial personnel and senior employees, it is equally important to recognise that IT personnel and support staff also possess the means to access UPSI.”⁶

Furthermore, the corporate may themselves divert or misuse money allocated for CSR etc. Hence with the weakening control systems due to pandemic may give rise

⁶ Doing Justice in Post-COVID World, Cyril Amarchand Mangaldas, (Aug. 2020) available at: <https://www.cyrilshroff.com/wp-content/uploads/2020/10/Doing-Justice-in-Post-COVID-World.pdf>

to *integrity* crisis at corporate level. Further owing to the financial loss the corporations are likely to reduce the budgets for compliance and internal investigations in order to reduce the overall costs of the organizations which can hamper the detection and prevention of such crimes.

(iii) **Digital Crimes and Cyber security**

India has become the favorite destination for cybercrimes during covid. With various fake UPIs being circulated for transferring money to the PM Cares fund, many cybercriminals also impersonated themselves as bank officials and promised loan moratorium by charging fee.⁷ Further as most of the organizations are working through the Work from Home, there is an increased chance of cyber attacks both at the individual and corporate level. It is usually difficult for the hackers or the cyber attackers to penetrate the protection systems installed by the companies. But in the years of WFH the sensitive data is more likely to be worked upon on personal computers which are not properly guarded against cyber attacks. Hence there is an increased risk of cyber attacks. In fact, as per a report there has been a significant increase in the cyber crimes in India in the recent times due to the pandemic.⁸

(iv) **Bribery and Corruption**

The uncertain nature of the temporary measures to tackle pandemic also leads to corrupt practices. The health care sector is operating with a sense of emergency and immediateness rendering it prone to criminal activities in relation to procurement, product development and distribution of services. The hoarding of oxygen, ventilators, black marketeering of drugs and profiteering by it has become common examples. The Government is playing a major role in securing the health services, product and infrastructure on an urgent level. However, on the other hands few private hospitals are charging exorbitantly from the patients⁹. A combination of these factors leads to reduced checks and a cost focused approach paving scope for corruption and profiteering.¹⁰ Efforts have been taken globally to address these

⁷ See, e.g., Tinesh Bhasin, Protect yourself from cyber fraud in the time of covid-19, Live Mint (Apr. 2021), available at <https://www.livemint.com/money/personal-finance/protect-yourself-from-cyber-fraud-in-the-time-of-covid19-11619727266648.html>

⁸ See, e.g., Prerna Lidhoo, "Digital fraud attempts from India up by 28%: Report", Fortune India (Apr. 30, 2021), <https://www.fortuneindia.com/technology/digital-fraud-attempts-from-india-up-by-28-report/105449>

⁹ Anoo Bhuyan, "Private hospitals in India are overcharging for safety gear in the absence of government regulation", Scroll.In (web), Jun. 13, 2020, <https://scroll.in/article/964534/private-hospitals-in-india-are-overcharging-for-safety-gear-in-the-absence-of-government-regulation>

¹⁰ See, e.g., Luke Baker, "Virus Response Opens Way for Corruption: EU Chief Prosecutor," Reuters (May 12,

concerns for e.g., Institutions such as GRECO and FATF¹¹ and various other NGOs have come openly make provisions to tackle the issue related corruption and financial crimes during the pandemic and otherwise.

(v) **Supply Chain Risks**

The Supply Chain is the worst affected by the pandemic. “Supply chain fraud is typically opportunistic and in the majority of cases involves complicit behavior from an internal source and frequent collusion with a third party. COVID-19 has presented ample opportunities for criminals to exploit; taking advantage of current supply shortages, reduced or immobile workforces, poor oversight and weakened approval processes, low productivity or staff morale, and instilling fear in a public that has become desperate from a situation as unprecedented as this one.”¹² In this regard it is noteworthy to observe the findings of BSI’s SCREEN Intelligence, according to which, there has been an increase of drug smuggling, theft of medical supplies, warehouse and facility theft, human smuggling and stowaway incidents. In addition, the transportation of goods remains disrupted due to the climate change and natural disaster. “Corruption by government officials was also a highlighted issue during Q3. In Mexico, the military took over customs administrations due to the high risk of corruption, although this is predicted to be a temporary fix for the problem. Similar issues of corruption occurred in supply chains throughout Q3 in Brazil and Thailand, with supply chain workers at ports participating in trafficking illegal drugs as well as border officials participating in illegitimate schemes.”¹³ Hence there has been significant impact on the supply chains which has been an experience of commoners both at micro and macro levels.

As per the survey conducted by Ernst & Young LLP in the late 2020, it was found that of all the companies interviewed 72% of them have experienced a negative impact on their companies due to the pandemic out of which 55% were

2020), <https://www.reuters.com/article/us-health-coronavirus-eu-corruption-inte/virus-response-opens-way-for-corruption-eu-chief-prosecutor-idUSKBN22O1SG>.

¹¹ Financial Action Task Force, “Covid-19 Related Money Laundering and Terrorist Financing Risks and Policy Responses,” <https://www.fatf-gafi.org/publications/fatfgeneral/documents/covid-19-ml-tf.html>.

¹² Alexander Geschonneck, The supply chain fraud pandemic, KMPG (May 07, 2020) available at: <https://home.kpmg/xx/en/blogs/home/posts/2020/05/supply-chain-fraud-pandemic.html>

¹³ Cargo theft and labor exploitation incidents increase risk to supply chains, British Standards Institution (Oct 21, 2020), available at: <https://www.bsigroup.com/en-IN/About-BSI/Media-Centre/press-releases/2020/october-2020/cargo-theft-and-labor-exploitation-incidents-increase-risk-to-supply-chains-as-covid-19-impact-remains-strong/>

significantly impacted. On the contrary only 11% reported that they had positive impact on their companies. Accordingly, “Among survey respondents, all automotive and nearly all (97%) industrial products companies said the pandemic has had a negative effect on them. In addition, 47% of all companies reported the pandemic disrupted their workforce. While many employees were asked to work from home, others — especially in factory settings — had to adapt to new requirements for physical spacing, contact-tracing and more personal protective equipment (PPE). Industrial products and high-tech manufacturing companies are investing overwhelmingly in technology to reduce employee exposure to COVID-19 in more labor-intensive industries. These are just a few examples of changes affecting supply chains across various sectors.”¹⁴ Hence there has been a significant effect on the supply chains which is leading to the various incidents such as cargo theft and undue inflated supplies.

(vi) **Counterfeiting of goods.**

The shortages of supplies, low productivity and highly corrupt environment have also brought with it the issue of fake or low standards products. There have been many examples of substandard or counterfeit products being released in the market and being sold as the consumers doesn't have any where else to go. Most of this counterfeiting is being done in the medical sector. Further this is the scenario across the globe. It has been reported that “An international operation conducted by Interpol in 2020 led to the seizure of over four million potentially dangerous pharmaceutical products worth US\$ 14 million. Additionally, fake COVID-19 vaccines are being sold on the internet in deprived regions of the world, and in March 2021, 2400 doses of a fake vaccine were smuggled into South Africa from China. There has also been an increase in organised property crimes during the pandemic with the use of real estate as a front to layer illicit funds, a method popular in the criminal underground.”¹⁵ Taking Lessons from these incidents the Central Bureau of Investigation in India issued warnings to all the States and Union

¹⁴ Sean Harapko, How COVID-19 impacted supply chains and what comes next, Ernst & Young (Feb. 18, 2021) available at: https://www.ey.com/en_gl/supply-chain/how-covid-19-impacted-supply-chains-and-what-comes-next

¹⁵ Suyash Das and Soumya Bhowmick, Pandemic-induced unemployment in India: Criminal activities on the rise, Observer Research Foundation (Mar. 23, 2021) available at: <https://www.orfonline.org/expert-speak/pandemic-induced-unemployment-india-criminal-activities-rise/>

Territories against the sale of counterfeit products.¹⁶ However, these warnings could not do much as the trade of fake healthcare products surged and kept coming in light day by day. To illustrate “The police in the western state of Gujarat this month discovered thousands of vials of fake remdesivir during a bust. A tipster led them to a factory where they recovered 3,371 vials that were filled with glucose, water and salt.”¹⁷ Hence the counterfeiting and sale of sub-standard or fake products in India has become rampant especially during the pandemic.

In addition to the above cited factors there are several other factors such as lack of awareness among people, incentives to commit crime to recover pandemic, situation of panic and desperation, scarcity and shortages of supplies etc. Further, the government relief packages may also offer an opportunity to the fraudsters to commit financial crimes by floating fake schemes. “Governments around the world are investing large sums of money to shore up their economies and make sure the most vulnerable people are cared for. Although it is too soon to have robust evidence on the appropriation of public funds by organized criminal groups, information from previous crises suggests that these groups will target such funds. Aid destined for distressed companies, medical and pharmaceutical goods, public works such as improvements to hospitals, and waste disposal services will be particularly at risk. Similar processes were seen after tropical cyclone disasters in Latin America, an earthquake in Italy, and the 2011 tsunami in Japan. In each case, organized criminal groups benefitted from public procurement processes.”¹⁸ Not only the Government but the fraudsters are also trapping the private entities in the name of Covid. The prime example of it was seen when JP Morgan dismissed few of its employees who were alleged to have misused the funds dedicated for helping businesses during the pandemic.¹⁹

¹⁶ See for e.g., PTI, CBI alerts police in states about racketeers selling fake hand sanitiser using methanol, The Economic Times (Jun. 15, 2020) available at: https://economictimes.indiatimes.com/news/politics-and-nation/cbi-alerts-police-in-states-about-racketeers-selling-fake-hand-sanitiser-using-methanol/articleshow/76387560.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁷ Hari Kumar and Jeffrey Gettleman, A Desperate India Falls Prey to Covid Scammers, The New York Times (May 16, 2021) available at: <https://www.nytimes.com/2021/05/16/world/asia/india-covid19-black-market.html>

¹⁸ UNDOC, THE IMPACT OF COVID-19 ON ORGANIZED CRIME, (July 2020)

¹⁹ JP Morgan dismisses several employees for misuse of Covid-19 relief funds, India Today (September 2020) available at: <https://www.indiatoday.in/world/story/jp-morgan-dismisses-several-employees-for-misuse-of-covid-19-relief-funds-1720434-2020-09-10>

It cannot be denied that even though the relief packages are rolled out with all good intent, the criminal finds ways to have their share in the relief by deceiving the beneficiaries in various schemes. For e.g. In USA “According to the Department of Justice, as of the end of March 2021, over 474 defendants have been charged with fraud-related criminal offenses. Approximately \$500 million in attempted and/or successful schemes are being investigated through the criminal justice system in both state and federal jurisdiction.”²⁰ Similarly in India also the situation seems to be at par with the increase in Covid-related offences. “Over the past month, the New Delhi police have arrested more than 210 people on allegations of cheating, hoarding, criminal conspiracy or fraud in connection with COVID-related scams. Similarly, the police in Uttar Pradesh have arrested 160 people.”²¹ Hence there are increased chances of spike in covid-related crimes especially those pertaining to finance, corporate and white collars. At this hour there is a need to encourage the law enforcement agencies who are engaged in ensuring compliance with law along with helping the people in need. Indeed that the pace of investigation and prosecution has come to a halt all of a sudden but considerable efforts have been made by the agencies to bust the rackets and criminals to help prevent the situation from worsening.

III. THE INDIAN RESPONSE

The pandemic has brought everything to halt but crime. With restrictions in place the Law enforcement agencies are working tirelessly to bring criminals to justice. However the time calls for even greater actions on the part of the regulators. A little progress is made in this regard, however it seems to be negligible considering the threats. In this section we will analyze the various legal tools adopted by the regulators to prevent commission of white collar crimes and also explore the possible ways through which the gaps can be covered. This section will survey the amendments made to variety of laws by different regulators to prepare the Indian legal machinery to combat pandemic with new teethes. These modifications to laws came in forms of ordinances, rules, notifications etc. An attempt is made to include laws category wise that were initially enacted by the government in a quick response to pandemic.

²⁰ James K. Paulick, COVID-19 Relief White Collar Crime Prosecution on the Rise, Leechtishman (Apr. 08, 2021), available at: <https://www.leechtishman.com/insights/blog/covid-19-relief-white-collar-crime-prosecution-on-the-rise/>

²¹ Hari Kumar and Jeffrey Gettleman, A desperate India falls prey to COVID scammer, The Economic Times (May 17, 2021) available at: <https://economictimes.indiatimes.com/news/india/a-desperate-india-falls-prey-to-covid-scammers/articleshow/82698790.cms>

- **Labor Laws**

The Central Government directed all states and union territories to take all possible measures to reduce the economic hardship followed by the migrant workers. Later the Central Government also issued a Standard Operating Procedure for the movement of the Stranded Labours. In this regard even the State Governments made many decisions.²² For e.g. the Rajasthan Government exempted application of certain provisions of the Factories Act, 1948 including extending of working hours from 8 hours to 12 hours and including the additional 4 hours as the 'overtime'.²³ In another example of Madhya Pradesh Government it mandated that no deductions shall be made from the salaries/wages of the workmen on account of closure of factories, shops or establishments.²⁴

- **Industry specific measures**

In a major relief to the industries the Reserve Bank of India allowed the commercial and cooperative banks, financial and non-banking financial institutions to grant three month (March-May) moratorium of repayment of the instalment of the loans advanced by them.²⁵ A similar notification was also issued by the Department of Financial Services to allow the healthcare policyholders to renew their health policies and pay their premium in the extended time. Apart from these various state governments have also taken various measures to allow the business a breathing time by relaxing the deadlines for compliances. For e.g. The Karnataka Real Estate Regulatory Authority extended three months time for the date of completion of all the projects registered with it²⁶. Similarly the Gujarat State Electricity Commission, Gujarat²⁷ also allowed the electricity suppliers holding licenses to pay their licence fees within extended time.

- **Tax related measures**

The pandemic brought with it a sense of emergency which required urgent supplies of medicines and equipments. In view of the same the Central Board of Indirect Taxes and Customs made a commendable job by exempting the various medical equipments such as

²² Order No. 40-3/2020-DM-I (A), Ministry of Home Affairs, Government of India, April 19, 2020

²³ Order No. F3(15) Legal/F&B/2020/188, Factories and Boilers Inspection Department, Government of Rajasthan, April 11, 2020

²⁴ Circular No. 622-723(2), Office of Labour Commissioner, Government of Madhya Pradesh, March 23, 2020

²⁵ Circular DOR.No.BP.BC.47/21.04.048/2019-20, "COVID-19 – Regulatory Package", Reserve Bank of India, March 27, 2020

²⁶ Circular No.Sec.CR.04/2019-20, Karnataka Real Estate Regulatory Authority, April 4, 2020

²⁷ "Notice regarding extension in time limit for payment of annual license fee for FY 2020-21", Gujarat Electricity Regulatory Commission, April 1, 2020

COVID-19 testing kits, face and surgical masks, personal protection equipment and ventilators etc.²⁸ Similarly the Central Government vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance relaxed some provisions of the Wealth Tax Act, 1957; Income Tax Act, 1962; Prohibition of Benami Property Transactions Act, 1988; Finance Act; Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; and Direct Tax Vivad se Vishwas Act, 2020.²⁹

- **Foreign Trade related measures**

The Foreign Trade Policy, 2015 which is valid for 5 years was extended for one more year up to 31 March, 2021. Further the timeline for claiming MEIS Incentive for export orders were extended by 3 months for the order placed between Feb-May 2019. The Advance Authorization and the EPCG Authorizations used for ease of export and import were automatically extended by six months if they were scheduled to expire in a certain time. In addition the exemption of GST for these Authorization holders was also extended.

- **Markets related measures**

The uncertainties of the curfews and closures have contributed to the fears of economic lockdown. This has made markets susceptible to manipulations. Thus efforts are required to be made to strengthen monitoring and enhancing alert system to prevent the vulnerable investors from the manipulators. In this regard the Finance Industry Regulatory Authority (FINRA)³⁰ in USA and Financial Conduct Authority (FCA)³¹ in the UK have taken measures to strengthen monitoring in the markets to prevent the abuse of the same. Similar efforts were taken up by the Securities and Exchange Board of India (SEBI) also which called for revision of criteria for investing in derivative segment (Futures and Options), increase in margin for other stocks and other related reforms in Futures and Options.³² Similarly recently SEBI has also warned investors against impersonation by third parties by releasing a Press Release.³³

²⁸ Notification No. 20/2020—Customs, Department of Revenue, Ministry of Finance, Government of India, April 9, 2020

²⁹ The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020,” Gazette of India, Legislative Department, Ministry of Law and Justice, March 31, 2020

³⁰ Philip Hilder, Market Manipulation/Fraud with FINRA on the Beat, Hilder and Associates (Jun. 16, 2020) <https://www.hilderlaw.com/blog/2020/06/market-manipulation-fraud-with-finra-on-the-beat/>

³¹ See, for e.g., Speech of Julia Hoggett, Market abuse in a time of coronavirus, Financial Conduct Authority (Oct 12, 2020), <https://www.fca.org.uk/news/speeches/market-abuse-coronavirus>

³² PR No. 18/2020, SEBI, Regulatory measures taken by SEBI in view of ongoing market volatility (Mar 20, 2020) available at: https://www.sebi.gov.in/sebi_data/attachdocs/mar-2020/1584706501261.pdf (See also, P.R. 59/2020)

³³ P.R. No. 16 of 2021, SEBI cautions investors against impersonation (Apr. 12, 2021),

- **Measures by Competition Commission**

Similarly “The Competition Commission of India also stepped in to issue an advisory to Business in times of Covid-19, aimed to serve as a deterrent to erring businesses indulging in rampant exorbitant increase in prices of certain essential commodities such as ventilators, face masks, gloves, sanitizers, medicines and essential services such as logistics, testing etc. Vide its advisory issued on 19th April, 2020 the CCI warned the businesses of various consequences under the Act that could be attracted due to the rampant exorbitant increase in prices of essential commodities.”³⁴

- **Amendments in the Companies Act**

Apart from the above the Ministry of Corporate Affairs has also issued various clarifications with respect to compliance and reporting requirements so as to defuse the mounting pressure on the corporations allowing them to operate softly. The Ministry has also clarified that setting up of makeshift hospitals and temporary COVID Care facilities is an eligible CSR Activity³⁵ The Ministry further clarified that ‘creating health infrastructure for COVID care’, and ‘establishment of medical oxygen generation and storage plants’ etc would also be treated as CSR Activities.³⁶ Thus, promoting investments in the COVID-infrastructure and also involving corporations in the fight against the pandemic which may promote sense of responsibility.

- **Force majeure clause**

“On February 19, 2020, the Indian Government issued Office Memorandum, stating that coronavirus shall be considered as natural calamity and Force majeure clause may be invoked wherever necessary. It is common practice in India to add Force majeure clause in commercial contracts. Therefore, it is high time for businesses to evaluate all commercial contracts with Force majeure clause and initiate appropriate action under the said clause if it is evident that Covid-19 situation will hamper the capacity of either of the parties to contract, to fulfil their legal obligation on time. Options of triggering of Material Adverse Change (MAC) clauses, possibility of re-negotiating contracts for prices/ volume

https://www.sebi.gov.in/media/press-releases/apr-2021/sebi-cautions-investors-against-impersonation_49823.html

³⁴ Aishani Singh, Covid-19 & Competition Act of India (Jun. 09, 2020), available at: <https://www.mondaq.com/india/antitrust-eu-competition-/949682/covid-19-competition-act-of-india>

³⁵ General Circular No. 5 of 2021, E-file No. CSR/10/9/2020-CSR-MCA, Ministry of Corporate Affairs (April 22, 2021)

³⁶ General Circular No. 9 of 2021, E-file No. CSR/1/5/2021-CSR-MCA, Ministry of Corporate Affairs (May 05, 2021)

of supply may also be analysed.”³⁷

In addition, though courts have issued advisories to temporarily entertain urgent matters only, nonetheless courts have been very proactive in addressing the issues during the pandemic and have strictly advised the government to take action against the violators of law and create task force. It is noteworthy to cite the judgment of three Judge Bench of Hon’ble Supreme Court of India *IN RE: DISTRIBUTION OF ESSENTIAL SUPPLIES AND SERVICES DURING PANDEMIC*³⁸ wherein it observed that:

“56 This Court would like to take judicial notice of the fact that several critical drugs, used to treat COVID-19, such as Remdesivir and Tocilizumab, are being sold at significantly inflated prices or in fake form. This is a condemnable attempt to exploit people’s misery and profit from their helplessness.

57 In order to clamp down on this practice, the Central Government can consider constituting a special team to identify and prosecute those who: (a) sell medical grade oxygen/COVID-19 medicines at exorbitant prices; and (b) sell fake substances and recover the concerned substances. A protocol for ambulances must also be evolved to avoid citizens being exploited by extracting unconscionable charges. The Central Government can consider creating a platform for easy reporting and redressal of such cases.”

Thus, even the courts are vigilant and addressing the issue at their own level. In view of the above it is observed that the various Law Enforcement Agencies have also made considerable efforts. The Enforcement Directorate has recently conducted many investigations as made several searches and seizures. In one of these cases ED found involvement of various Chinese companies involved in advancing finances at micro level in collusion with Indian companies without obtaining requisite approvals.³⁹ Similarly it also filed charge-sheet in the notorious Embraer defence deal case and the ICICI-Videocon money laundering case. Apart from ED, “The Central Bureau of Investigation (CBI) registered 596 cases, and around one-third of the cases were related to bank frauds... The

³⁷

Impact of coronavirus threat and restrictions on Indian companies: legal and regulatory changes, Insights, Rodl and Partners (May 13, 2020) available at: <https://www.roedl.com/insights/covid-19/impact-coronavirus-threat-restrictions-indian-companies-legal-regulatory-changes>

³⁸ Suo Motu Writ Petition (Civil) No. 03 of 2021, Supreme Court of India dated April 30, 2021. Available at: https://main.sci.gov.in/supremecourt/2021/11001/11001_2021_35_301_27825_Judgement_30-Apr-2021.pdf

³⁹ ED attaches ₹77cr of Chinese firms in fraud case, Hindustan Times (May 12, 2021), <https://www.hindustantimes.com/india-news/ed-attaches-77cr-of-chinese-firms-in-fraud-case-101620759807700.html>

CBI also booked companies and their officials under the newly enacted corporate criminal liability provisions of the Prevention of Corruption Act, 1988. A notable instance was the booking of a Delhi based import/export company on the allegation of providing illegal gratification to the officials of the Inland Container Depot for extending undue favours for inspection and clearance of import assignments.”⁴⁰

Therefore, though the pandemic has slowed down the process of law enforcement, the authorities are making some efforts to investigate the white collar crimes and other financial frauds. However, in addition to these adequate procedures, several other steps needs to be taken such as protecting and incentivising of whistle blowers, prompting internal audit and investigations, preventing insider trading, enhancing cyber security etc.⁴¹ It is further to be noted that the conviction rate in India is very low and it take the courts/tribunals years to dispose cases involving economic offences also. Thus special measures needs to be taken to ensure that the regulators, authorities and courts all work in aligned way to help us prevent cases during pandemic.

IV. RECOMMENDATIONS

Although the pandemic has much reference to the medical, however it has ramifications through all walks of life. It has halted life across the globe and brought everything to standstill. However, things are not as standstill from the governmental perspective. While the populace is locked inside the doors, the authorities are trying their best to get the situation in control. Indeed, the corruption has prevented us from achieving desirable results, however it cannot be denied that the law enforcement agencies have made commendable progress despite being overworked. The Supply chains will take another couple of years to restore. The counterfeit products will stay in the markets and the cyber crimes are likely to increase. Thus, it becomes desirable for anyone at individual level, organizational level and/or governmental level to take certain steps to overcome the difficulties presented by the pandemic and restore the status quo as it was before. In this view, the author seeks to make following recommendations for governmental organizations and companies:

- **For Governments**

- Governments may initiate programmes at grass root levels for providing aid

⁴⁰ White-Collar Crime Investigations: Legal Milestones Financial Year 2020-21 and a Look Ahead, Trilegal (Apr. 14, 2021) available at: <https://www.trilegal.com/index.php/publications/update/white-collar-crime-investigations-legal-milestones-financial-year-2020-21-a>

⁴¹ Bharat Chugh, COVID and White-Collar Crime, SCC Online, (Jan. 19, 2021) available at: <https://www.scconline.com/blog/post/2021/01/19/covid-and-white-collar-crime/>

and assistance to the vulnerable by granting direct sustenance to them such as medicines, equipments which help fight the counterfeiting and inflated pricing.

- Governments may identify key industries that are significant in fight against the pandemic and sustaining the economy and make direct support to them through relaxations or grants.
 - Government may use the unutilized capacity of the youths and may generate employments. This will help in two ways firstly taking the relief to the poor and the capacity utilization.
 - Government may use technology to prevent spread of the disease and monitor home isolations so that extremities can be avoided by timely actions and the demand of key supplies such as oxygen can be brought down. This will reduce black marketing.
 - Government may identify the covid-related crimes and start an awareness campaign to make people aware about the modus operandi.
 - Government may regulate or fix the prices of the medical supplies for a temporary period of time along with vigilant monitoring which will help keep a track of supplies and keep price uniform throughout the nation.
 - Government may give more powers or ease the procedure for the investigating agencies so that they can do prompt investigations and allow data sharing between different agencies and create a temporary pool of information.
- **For Companies**
 - Companies must take all the complaints, suspicion or indications of potential contraventions or violations of company's rules seriously and must go to the root of every matter.
 - Companies must invite suggestions from all levels so that the possible and modern ways of criminal activities and suspicions can be identified and views can be implemented. These exercises helps the companies send message to the employees that the company is constantly engaged in checking criminal activities.
 - Companies may review the substantial transactions and check if there is factor suggesting involvement of bribery or corruption or unlawful

agreements.

- Companies may require their employees to install certain safeguards against cyber attacks or require certain data to be processed or stored in a particular way so as to avoid data theft or cyber attacks.
- Companies may work closely with the Directors or KMPs who are considered ethical and compliant from the perspective of government, authorities, stakeholders, investors etc.
- Companies may opt to do thorough background checks of the existing or new employees which may help them identify the potential threats or integrity lapses.

V. CONCLUSION

It cannot be denied that the pandemic and the restrictions it brings will continue to affect the investigations and prosecutions of the white collar crimes, economic crimes and other regulatory misconduct and non-compliance. Considering the already slow process of enforcement in India, it would take years to identify and detect the crimes committed during this year and to prosecute them. The crimes, on the other hand, will continue to rise. Hence in view of the same, the government and authorities are required to adopt pro-pandemic or pandemic-specific measures to investigate and prosecute the covid-related white collar and financial crimes. The recently enacted Lokpal (Complaint) Rules, 2020 could play significant role in combating corruption at governmental level. Also the implementation of the CARO, 2020 may also help in mitigating frauds at early stage due to internal investigations. Thus there is a need to identify the various factors influencing commission of financial crimes and the measures that can be adopted by government to address those factors.