

## HOARDING AND BLACK-MARKETING DURING COVID-19 PANDEMIC: AN ANALYSIS OF VARIOUS STATUTORY PROVISIONS TO CURB THE PROBLEM

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***“The World Has Enough for Everyone’s Need, but Not Everyone’s Greed”- Mahatma Gandhi***

### Abstract

*The COVID-19 pandemic has taken up the whole world. The developed countries even cannot fight it due to non-availability of vaccination for virus. In the county of 1.38 billion people, this new virus has created a havoc, which has resulted in the sudden scarcity of items which are essential for the controlling of the virus. The problem can be understood in two-fold: Black Marketing & Hoarding. Black marketing is the illegal trade of goods and services with the intention to evade the lawful requirements of such trade. Two such common tactics used are to increase the price beyond the controlled price or lower the price below the normal. Hoarding, on the other hand is habit of accumulating food or other essential items. In this paper the author tries to present a brief picture of hoarding and black marketing which took place due to COVID-19 and simultaneously the author also tries to provide the statutory provisions as well as also discusses the Government initiatives in curbing the hoarding and black marketing.*

**Keywords: COVID-19, Black-marketing, Hoarding and statutory provisions etc.**

### Introduction:

Since the British left and India emerged independent, we have been planning to achieve growth with real structural change and economic parity with the help of massive direct and indirect state intervention in the economic sphere. The immediate results were the promulgation of enormous physical controls in most of the affairs concerning public needs and transactions. The absence of

control worsens situation, in which businessmen by creating artificial scarcities carry on unbridled exploitation and thus generate black money.

India has inherited the legacy of controls largely from the days of the Second World War, when due to shortages the then government imposed rationing and price controls to ensure availability of goods so as to protect the average citizen from rising prices due to the shortages created by the war. What was however created as an emergency measure to fight the scarcity conditions of a war economy has by now become more or less a way of life, be it industrial licensing, power distribution or prices of essential commodities. In fact, at present it has become the usual practice of politicians and bureaucrats to deal with shortages by laying down quotas/ rationing and price controls. As such, price control in one form or another exists for a variety of commodities in our country, the important of these being food grains, drugs and pharmaceuticals, cement, sugar, steel, coal, fertilizers, paper, aluminum, pesticides etc.

On the other hand, the perpetual shortages tend to increase the market value of the commodity and thereby encourage the manufacturer and trader to siphon out the product from the official to the unofficial channels and thereby make a fast buck. The concerned commodities eventually get sold in the black market at a high margin of profit with the net result that the consumer for whom all these exercises (control, rationing etc.) were designed is no better off as the commodity is either not available or exhausts itself very fast in the official channels/fair price shops. The diversion of the commodity into black market channels also results in the government and local bodies losing all the revenue in the form of excise, sales-tax, octree etc. It is worth mentioning, that continuous inflationary pressure and spiraling price level helped the popular practice of black marketing in Indian trade and business scene. "... price controls corrupt the society, result in losses to the government and local bodies, retard the development and growth of the product and what is worst 8 eventually do not benefit the consumer."

A widespread black market can be noticed concerning various commodities and products in Indian market scenario due to erratic and scanty flow of many consumer, agricultural and industrial goods. It is obvious that such a situation will lead to acute scarcities and windfall gains which are unlikely to be fully declared to the revenue authorities.

#### **Meaning of Black Marketing:**

The meaning of term “*Black Marketing*” is an illegal transaction of distribution and production of the goods and services, which are prohibited by law such as – drug trade, prostitution, illegal currency transactions, human trafficking etc. These kinds of transactions usually done through cash only so that they can hide from the eyes of government.

### **Meaning of Hoarding:**

The term of meaning “*Hoarding*” is the purchase of large quantity of commodity with the intention to sell it in future when it is under stock or not available in the market at a higher price. We can say this as a kind of monopoly over market, when people do not have any option to purchase the same commodity with other buyer due to shortage of the same. This way the concept of hoarding is somehow related to black market as this kind of transactions are also prohibited by law. The same way as black marketing, people indulged in the hoarding business to maximize their profit by the unfair means of business. This commodity is generally a basic goods used in commerce by large number of people. The term hoarding is different from cartelization as in cartelization there are number of suppliers or manufacturer who come together and try to limit the supply of goods for some time so that at the event of shortage of such commodity they all can monopoly over the market and maximize their profits through raising the prices of the goods. On the other hand, in the process of Hoarding, there is individual participant who try to capture the market but the hoardings can easily be converted in to process of cartelization by come to an agreement by number of suppliers or sellers to limit the supply of any particular commodity used by public at large.

### **Hoarding and Black Marketing during COVID-19:**

The outbreak of the COVID-19 in India has seen an unprecedented surge in the demand for hand sanitizers and facemasks. While, attempting to purchase a bottle of sanitizer for the family, I visited various pharmacies, turned away at all saying they were out of stock.

Masks are thought to slow the spread of disease when they are worn by sick people in crowded places like emergency rooms, offices, subways and buses. By containing coughs and sneezes, masks stop virus-laden droplets from being spewed into the air and onto nearby surfaces. Not only is there a great deal of panic buying that is taking place, but people are also resorting to

hoarding these products. Some pharmacies report being entirely sold out of masks. Some popular sellers on Amazon say deliveries will be delayed for weeks.

But hoarding by those who are well means that hospitals, clinics and doctors' offices could run short. Doctors and nurses treating patients for respiratory infections should wear masks and replace them often as soon as they become soggy. The central government warned of stringent action against hoarding and black-marketing of face masks and hand sanitizers amid increasing demand in the wake of rising coronavirus cases in India.

To curb this, in a series of tweets, Ram Vilas Paswan, Minister of Consumer Affairs, Food and Public Distribution, said that a 200 ml bottle of hand sanitizer cannot be sold for more than Rs 100. Other sizes of bottles will also be priced in the same proportion. These prices will be applicable throughout the country until 30 June 2020.

He added that the price of 2 ply (surgical) masks cannot be more than Rs 8 per piece while that of 3 ply (surgical) masks cannot exceed Rs 10.

Due to the Covid-19 outbreak, the Ministry of Consumer Affairs has brought hand sanitizers and masks (2-ply, 3-ply variety and N95) under the purview of the Essential Commodities Act (EC Act) until June 30.

Amid reports of non-availability and black marketing of surgical and protective masks, sanitizers and gloves and as a measure of preparedness to address the challenge of outbreak of COVID-19, the health ministry has mandated the National Pharmaceutical Pricing Authority (NPPA) to notify these items as drugs.

“In pursuance of directions conveyed by Ministry of Health and Family Welfare vide order dated 13.03.2020 under clause (I) of sub-section (2) of section 10 of the Disaster Management Act, 2005, National Pharmaceutical Pricing Authority has been mandated to regulate the availability and prices of the Surgical and protective masks, Hand sanitizers and Gloves,” the pharmaceuticals department under the Chemicals and Fertilizers Ministry said.

Under the EC Act of 1955, if the Central government thinks that it is necessary to maintain or increase supplies of any essential commodity or make it available at fair prices, it can regulate or prohibit the production, supply, distribution and sale of that commodity. Some of the essential

commodities listed out in the schedule to this Act are foodstuffs including edible oils and oilseeds, drugs, fertilisers, petroleum and petroleum products. But the Centre has the power to add or remove any commodity in public interest from this list, and that's what it has done with masks and hand sanitizers.

In the past, the Essential Commodities Act was mostly invoked to control the price rise in food products. When the prices of any of these commodities rise, the government imposes stock-holding limits to prevent hoarding, confiscates the stocks of violators and imposes punishment.

But in the context of a crisis like the current one, the Essential Commodities Act seems to serve a purpose. Bringing masks and sanitizers under the Essential Commodities Act will enhance the availability of these products to the public, at fair prices. Producers have been urged to manufacture these up to full capacity over three shifts. The government can take action against hoarders, speculators and those involved in jacking up prices or black-marketing. Besides this, quota restrictions on raw material holdings can be relaxed. The Ministry of Consumer Affairs (MCA) has asked all State governments to issue licenses and permit to hand-sanitizer makers to store ethanol and extra neutral alcohol (ENA) without any quota restrictions. The Indian Sugar Mills Association and All India Distilleries Association have been asked to ensure that ethanol and ENA are made easily available to producers.

### **Statutory provisions against Hoarding and Black Marketing:**

The prevention of black marketing and maintenance of supplies of essential commodities Act, 1980 was enacted on 12th February, 1980 and came into force on 5th October 1979. This Act prohibit the participants to get indulge into black marketing or hoarding transactions by its provisions under which there are provisions for punishment against such persons who commits the same.

This Act empowers the state government or central government or an officer of rank not below the Joint secretary representing Centre or State Govt. in case has a reason to believe that a person is committing an against provisions of the Act shall make an order for detaining such person.

This Act also gives the similar power to district magistrates and commissioner of police to take any action against such participants.

Section 3 (2) – Any order taken by an officer under this Act shall be brought into the notice of government along with relevant details.

The order shall remain into force for not more than twelve days after making it within which the State govt. shall approve the order.

The State government shall within seven days' report to central government along with the grounds of order where after detention order under Section 3(2) shall be carried.

Even if the order of detention was carried out outside the territorial jurisdiction of the government making order, it shall not be invalid merely on this ground.

According to Section 4, if a person is found to avoid order of detention or is absconding, the Government or officer shall draft a report in writing to Metropolitan Magistrate or Judicial magistrate first Class who shall order against such person under section 82, 83, 84 and 85 of Code of Criminal Procedure which shall apply against the person and his property. Provisions of section 4 are also applicable once the authorities have an apprehension of absconding of person against whom orders of detention have been made.

In case of failure to make an appearance before the court such person shall be imprisonment extending one year and with fine or both. These offences fall within the category of cognizable offences. The detained person should be aware of the grounds of detention and shall be given an opportunity of fair representation.

Section 9 deals with the appointment of an advisory board consisting of three persons who is, are qualified or had been judge of a High Court, along with one another member who is, or has been Judge of High Court. This is the duty of the State government to refer the detained person before advisory board along with the representation of grounds of detention, where after the advisory board shall look into all aspects of the matter brought in front of it.

Invoking the Act makes it harder for retailers to hoodwink customers. If they violate the norms, States can take action under the EC Act and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (PBMMSEC Act). An offender under the EC Act may be punished with an imprisonment of up to seven years and/or fine; and under the PBMMSEC Act, they can be detained for maximum of six months.

However, Enforcement agencies are also faced various difficulties in enforcing all the necessary guidelines as there are certain factors in ensuring prevention of black marketing and profiteering of these items for public interests. Some of these factors faced by Enforcement agencies are as follows:

**1. Regulation of Production:** As the cases of corona virus were on a rise in India need for various products such as mask, hand sanitizer and gloves and demand of various other essential goods began to rise and the demand was much larger than usual production. So the main challenge before the enforcement agencies is to regulate the production of these essential goods so as to meet the demand of the general public at this point of time when the entire country is in complete lockdown.

**2. To maintain quality:** Enforcement agencies have to also focus on maintaining the quality of the essential goods which are being served to the general public. Because there are many producers which can use unethical means such as not meeting the basic quality requirement of producing the product and supply such low graded products in the market supply chain. So the main task with the enforcement agencies is also to check that no producer practices unethical means to supply the product.

**3. Control on Black marketing of products:** There is the rise in price of gloves and face mask due to scarcity of product. So the sellers are just exploiting the consumer by doing black marketing of products such as face mask cost which earlier had a cost of 10 rupees now cost 50or 60 Rupees or even more. In this huge Epidemic instead of helping they are making profit by doing black marketing of products by storing few month food products due to which there is scarcity of these products in the market. And the production house has been shut off so there is less supply and more demand of product so seller are also exploiting consumers by using dynamic price policy.

### **Conclusion:**

In the current situation where whole of the world is facing a problem with the Covid-19 at the same time countries are facing problem with black marketing and hoarding. The government made various steps to overcome this problem by using the aforesaid act i.e. The Prevention of Black Marketing and Maintenance of Supplies of Essentials Commodities Act 1980 (PBMMSEC

Act). The Central Government and the State Governments has capped the price of safety measures goods such as mask, sanitizers etc. The other steps taken by the government to curb down the hoarding is to keep open essentials commodity shops in the particular set of time period. The author would like to put some suggestions to curb the problem in such situations and they are as:

1. Instead of indirect supplies, chain of supply should be small and government authorized body should purchase the goods and keep record and sell further as per the govt. directions.
2. Further the state government or the central government can fix the shops or can create government authorized booths for all the commodities.
3. Capping on the purchase should be there. Example one individual should be allowed one packet of bread for a day.
4. It is reiterated that strictest possible action shall be taken against such traders and retailers as per law, so that it can be a deterrent effect on the society.
5. Lastly the government can form an advisory body and regulate the supply and sale according to the demand and make record of the same.

These are the some suggestions through which the problems of hoarding and black marketing in future can be curtailed down.

### References:

1. Chopra,BS KS: Price Controls, (ed.) Kulkarni, G.B; Price Controls in the Indian Economy, The Times Research Foundation, (1984), P. 44.
2. Laws Prohibiting Hoarding or Black Marketing in India, Anubhav Pandey, <https://blog.ipleaders.in/hoarding-prohibition-law/>, Accessed on 28/03/2020.
3. Mask hoarders may raise risk of a coronavirus outbreak in the U.S., <https://www.pharmacist.com/article/mask-hoarders-may-raise-risk-coronavirus-outbreak-us>, Accessed on 28/03/2020.
4. Govt fixes MRP of 200 ml hand sanitiser bottle at Rs 100, <https://www.theweek.in/news/biz-tech/2020/03/21/govt-fixes-mrp-of-200-ml-hand-sanitiser-bottle-at-.html>, Accessed on 28/03/2020.
5. All you wanted to know about Essential Commodities Act, Parvatha Vardhini C, <https://www.thehindubusinessline.com/opinion/columns/slate/all-you-wanted-to-know-about-essential-commodities-act/article31143709.ece>, Accessed on 28/03/2020.
6. Publicise measures to curb black-marketing of hand sanitizers and face masks, act strictly against violators: SC to govt; [https://www.barandbench.com/news/litigation/coronavirus-publicise-measures-to-curb-black-marketing-of-hand-sanitisers-and-face-masks-act-strictly-against-violators-sc-to-govt\\_](https://www.barandbench.com/news/litigation/coronavirus-publicise-measures-to-curb-black-marketing-of-hand-sanitisers-and-face-masks-act-strictly-against-violators-sc-to-govt_) Accessed on 11/04/2020
7. Pranjape,N.V: Criminology, Penology & Victimology, Central Law Publications (2017), 17th edition, P. 154.



