



## Law Relating To Prevention of Black Marketing: International And National Scenario With Reference To India

Manveer Kaur, Researcher , Ph.D. (Law)  
Panjab University, Chandigarh

### ABSTRACT

Black-marketing emerges after World War II and has kept on increasing day by day. That time it emerged due to scarcity of essential goods. But now it has become an evil to fulfil the illegal greed of money. The greed of earning more and more profits has given a remarkable growth to black-marketing that besides essential commodities or services, black-marketing has touched the ground of terrorism, medical field etc. at international level. These are mostly associated with middle and upper class of society and have added new chapter to criminal jurisprudence.

ISSN : 2348-5612 © URR



However a critical analysis of the said laws shows that various legal issues arising due to activities of prevention of Black-Marketing and maintenance of supply of essential commodities, in economy remain untouched by these Laws and attract attention of international community. This paper is a humble attempt to make in depth study of international and Indian law relating to prevention of black-marketing and maintenance of supply of essential commodities and various legal issues which needs immediate attention.

### METHODOLOGY

It is theoretical study based on international and national instruments, reports, articles, and internet.

### 1. INTRODUCTION

Black-Marketing is an economic activity that takes place outside government sanctioned channels. Black market transactions usually occur “under the table” to let participants avoid government price controls or taxes. Black marketing in India has assumed an alarming significance in recent past. It spreads its harsh, destructive, unscrupulous arms to all fields covering the barest necessity of life. Essential commodities are termed by different Acts and Statutes are all within its purview. Despite strict measures by government, the grip over the black market violation is very loose.

The Law Commission Report States: “The term black-marketing is obscure and emphasises that definition of expression should not include suppression of facts relating to the acquisition or disposal of things controlled by different special laws”

**Definition of ‘Black-Marketing’ by Law Commission also covers the following fields:**

- Regulated production
- Manufacture
- Supply
- Distribution
- Storage in excess of permissible quantity,
- Acquisition or movements, etc. of essential commodities

### 2. LAWS TO PREVENT BLACK-MARKETING: INTERNATIONAL SCENARIO

After World War II, there was lacuna in law to deal with the problem of Black-Marketing. The post war reconstruction programmes evidenced greater economic activity and consequently greater need was felt for further regulation. In United Kingdom the special legislation to check these socio-economic crimes were as follows:

- The Borrowing (Control and Guarantees) Act, 1946



- The Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948.
- The Customs and Excise Act, 1952, Food and Drugs Act, 1955,
- The Rapeutic Substances Act, 1956,
- The Restrictive Trade Practices Act, 1956,
- The Resale Prices Act, 1964,
- The Monopolies and Mergers Act, 1965,

Various Commonwealth countries also enacted special legislations to check these socio-economic crimes. Following are some of the other laws regulating the new malady.

- In Australia, each constituent, State has its own pure food Act but in order to secure uniformity a National Health and Medical Research Council was created.
- There is a separate Directorate under the Department of National Health and Welfare which was created to administer the Food and Drugs Act, 1953, in Canada
- Food and Drugs Act, 1949 of Ceylon,
- Public Health and Urban Service Ordinance, 1960, of Hong Kong,
- Food Sanitation Law, 1947 and Anti-Monopoly Law, 1947, of Japan,
- Sale of Food and Drugs Ordinance, 1952, of Malaya,

Despite all these legislations Black-marketing has become a global problem. At most each and every country faces problems caused by it. Specifically black-marketing of arms and weapons has recognized at international level, as it also lead to terrorist activities. Taking notice of this United Nations has also legislated treaties and resolutions to curb the black-marketing:-

**i. Arms Trade Treaty (ATT) to Prevent and Control Black-Marketing of Arms, 2014**

The Arms Trade Treaty (ATT) is a multilateral treaty that regulates the international trade in conventional weapons. It entered into force on 24 December 2014. The ATT is an attempt to regulate the international trade of conventional weapons for the purpose of contributing to international and regional prevention and control of black-marketing, reducing human suffering, and promoting co-operation, transparency and responsible action by and among states. The treaty was negotiated at a global conference under the auspices of the United Nations in New York.

**Signatories and Parties**

As of May 2015, 73 states have ratified the ATT, including five of the world's top 10 arms producers (the United Kingdom, France, Germany, Italy and Spain).

**ii. Resolution: - Weapons of Mass Destruction (WMD)**

The United Nations on 29 Apr 2004 directed all countries to take strong action to stop the proliferation of weapons of mass destruction, particularly by black marketeers and terrorist groups such as al-Qa'eda. Nearly three months after the uncovering of the "nuclear supermarket" operated by the Pakistani scientist A.Q.Khan, the UN Security Council unanimously approved the first Resolution it has passed on preventing the black marketing of spread of WMD technology.

**3. LAWS TO PREVENT BLACK-MARKETING: NATIONAL SCENARIO**

To curb with black-marketing the laws at international level are not only sufficient. Each and every State has to legislate laws to deal with such evil of black-marketing. In India also has taken number of steps towards this problem. Number of committees and laws are there to witness the serious thought of legislature's intention to curb this problem.

**i. Constitution of India**

The Fundamental Rights, Directive Principles of State Policy and Fundamental Duties are sections of the Constitution of India that prescribe the fundamental obligations of the State to its citizens and the duties of the citizens to the State. It ensures free movement and exchange of



goods throughout the territory of the country which is essential for the economic unity of the nation which alone could sustain the progress of the country.

**ii. Indian Penal Code, 1860**

Indian Penal Code is to deal with crimes against individual as well as public. However it does not provide provisions for black-marketing but there are some provisions of Indian Penal Code, 1860 which deals with offences of weights and measures can be used to combat with black-marketing as using false weight and measures for goods amounts to black-marketing.

**iii. The Drugs and Cosmetics Act, 1940**

An Act to regulate the import, manufacture, distribution and sale of drugs and cosmetics whereas it is expedient to regulate the import, manufacture, distribution and sale of drugs and cosmetics and whereas the Legislature of all the Provinces have passed resolutions to control black-marketing of drugs and cosmetic products. In relation to such of the above-mentioned matters and matters ancillary there to as are enumerated in List II of the Seventh Schedule to the said Act.

**iv. Drugs Control Act, 1950**

To control the sales, supply and distribution of any drug the Government of India can set maximum selling price, maximum quantity to be possessed by dealer and maximum quantity to be sold to one person. Taking cognizance of the subject matter Parliament of India has enacted Drugs Control Act, 1950.

**v. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954**

Magic remedies like doubling the money in few days, products free on purchase of other products etc., are some of illustration which enlarges the scope of black-marketing. This endanger the society at large, the legislature restrict this kind of advertisement to curb the problem of black-marketing.

**vi. The Essential Commodities Act, 1955**

The Essential Commodities Act is an Act of Parliament of India enforced on April 01, 1955 which was established to ensure the delivery of certain commodities or products, the supply of which if obstructed owing to hoarding or black-marketing would affect the normal life of the people. This includes foodstuff, drugs, fuel (petroleum products) etc.

The main objectives of Act are:-

1. Ensure the easy availability of essential commodities to consumers and to protect them from exploitation by unscrupulous traders.
2. This Act empowers the Central Government to:
  - Regulate production, supply, distribution, storage, transport, etc.
  - Control price of commodities which have been declared under the Act, as essential are provided for those who commit offences under the Act.

**vii. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974**

Black-marketing has wider sense and it include number of activities. Producing duplicate products of branded product or importing goods without paying import duties which are generally dutiable goods and importation of such goods in illegal manner termed as smuggling. Such smuggling can be of any kind either of goods or currency. To control such activities Parliament of India passed Conservation of Foreign Exchange and Prevention of Smuggling Activities Act(COFEPOSA), 1974.

**viii. The Consumer Protection Act, 1986**

This Act sought to provide better protection of the interests of consumers and for that purpose, made provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

This Act seeks to promote and protect the rights of consumers such as:

- a. The right to be protected against marketing of goods which are hazardous to life and property.



- b. The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practice;
- c. The right to be assured, whenever possible; access to variety of goods at competitive prices;
- d. The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- e. The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- f. Right to consumer education.

In 2002 this Act is amended and introduced a new definition in Sec.2(O)(o) i.e. spurious goods and services which means such goods and services which are claimed to be genuine but they are actually not so.

**ix. The Foreign Exchange Management Act, 1999**

Every nation in the world trades with other nations. Foreign exchange is the trading of different national currencies or units of account. To combat with such activities of black-marketing and regulating the foreign exchange activities in legal way The Foreign Exchange Management Act come in to force December 29th 1999.

**x. Food Safety and Standards Act, 2006**

The distribution of impure and adulterated food for consumption is an act injurious to human life and health, hence a dangerous act cannot be made innocent and harmless by the want of knowledge or by the good faith of the seller, it is the act itself, not the intent that determines the guilt and the actual harm to the public is same as in one as the other.

**xi. Prevention of Black-Marketing Act, 1980**

The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Ordinance, & was promulgated on 5th October, 1979. To replace the said Ordinance by an Act of Parliament, the Prevention of Supplies of Essential Commodities Bill was introduced in Parliament and it received the assent of President on 12th February, 1980 to deal effectively with malpractices like black marketing, hoarding, profiteering, and to arrest the unjustified rise in price of essential commodities by providing for the preventive detention of persons likely to indulge in such practices. An Act to provide for detention in certain cases for the purpose of prevention of black-marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith. The violation of black-marketing regulations and activity has been seriously affecting the security of state adversely of long. The Act has been enacted with object of dealing with such violations. The Act is constitutionally valid for preventive detention in certain cases of black-marketing activities and for matters connected there with.

#### **4. CONCLUSION**

Human resource development of a nation is the barometer of its socio-cultural growth. This growth is mainly facilitated by the administrative efficiency depending upon the versatility and dynamism of the "socio-economic" legislations and their smooth implementation. Black marketing is directly proportional to social loss. Beside other relevant laws to curb black-marketing the "Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980" is specifically dealing with problem of black-marketing. To make fully effective and to serve the purpose black-marketing shall put under cognizable offences category. Sometimes misuse of provisions by the authorities has been, the judiciary has intervened and interpreted the provisions from time to time.



**References:**

1. Law Commission of India 29th Report, 1952 at 3.
2. Ahmad Siddique, Criminology and Penology, 188 (2002).
3. [https://en.wikipedia.org/wiki/Arms\\_Trade\\_Treaty](https://en.wikipedia.org/wiki/Arms_Trade_Treaty) visited on August 02, 2015.
4. [https://en.wikipedia.org/wiki/Weapon\\_of\\_mass\\_destruction](https://en.wikipedia.org/wiki/Weapon_of_mass_destruction) visited on August 02, 2015
5. The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution.
6. The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution.
7. Indian Penal Code, 1860 Section 264-267
8. The Government Of India Act, 1935 Section 103
9. <http://clap.nls.ac.in/legis/legis17.pdf> visited on August 18, 2015
10. Law Commission of India 47th Report, 1972
11. Manekhen v Union of India, ILR 1975, 2Delhi820
12. Pannalal v State of UP, 1975 Cri.LJ. 1426;
13. Entry 9 of List 7th of the Constitution of India