



## **JSA Newsletter** Anti-Corruption, White Collar Crimes & Investigations Practice



April 2024

The first quarter of 2024 has witnessed significant enforcement actions and judicial developments. In addition to multiple arrests, raids, and investigations undertaken by the Central Bureau of Investigation (“CBI”) and the Enforcement Directorate (“ED”), this quarter also witnessed some notable judicial developments with respect to the Prevention of Money Laundering Act, 2002 (“PMLA”). The following newsletter sets out the key trends, enforcements, and developments within the white-collar crime and corporate internal investigations landscape for the first quarter of 2024 i.e., (January – March 2024).

### **Enforcements Landscape**

#### **Jal Jeevan Mission Scam**

The ED in January 2024 conducted follow up search operations at 8 (eight) locations in Jaipur and Banswara, Rajasthan under the PMLA at the residential premises of a former minister (Government of Rajasthan) and other government officials along with private individuals who have been accused in the Jal Jeevan Mission Scam. As per publicly available sources, unaccounted cash worth INR 39,00,000 (Indian Rupees thirty-nine lakh) along with various incriminating documents including property details, digital evidences, mobiles were seized by the department during search operations. Total confiscations and seizures amounting to INR 11,42.00,000 (Indian Rupees eleven crore forty-two lakh) have been reported so far, which includes gold and silver items worth INR 6,50,00,000 (Indian Rupees six crore fifty lakh) as well.

#### **CBI raids former J&K Governor in hydroelectric project case**

The CBI in February 2024 raided former Jammu and Kashmir (“J&K”) Governor in connection with malpractices and alleged corruption charges relating to the awarding of a civil work contract for the INR 2,200 crore (Indian Rupees two thousand two hundred crore) Kiru Hydro Power Project in J&K to a private firm in 2019. Reportedly, the CBI has conducted searches across 8 (eight) states and union territories, including J&K. Digital and documentary evidence of huge cash deposits, investment in fixed deposits, investment in properties in various cities were recovered by CBI, as per media sources.

#### **Massive Aadhaar-GST scam unveiled in Gujarat**

In February 2024, the state goods and services tax (“GST”) department (in collaboration with the local police authorities) arrested 14 (fourteen) people in Gujarat for the Aadhaar-GST fake billing scam. The provisions of the Gujarat Control of Terrorism and Organised Crime Act 2015 (“GUJCTOC”) were invoked against 20 (twenty) repeat offenders, who have also been linked to previous GST-Aadhaar scams. For the first time ever, provisions of the GUJCTOC have been invoked against 20 (twenty) suspects in Gujarat for a GST scam, involving the illegal use of Aadhaar

cards to generate fake GST identification number (“**GSTIN**”) numbers. The state authorities were brought to attention about this scam upon discovering 13,345 (thirteen thousand three hundred forty-five) fraudulent GSTINs nationwide, of which around 4,308 (four thousand three hundred eight) bogus GSTINs were traced back to Gujarat (representing the highest number in India). Consequently, a racket involving a novel modus operandi to obtain fake GST registrations, issue bogus bills for fictitious firms, claim Input Tax Credit (“**ITC**”), and evade taxes was uncovered and busted. The scam is reported to be over INR 15,000 crore (Indian Rupees fifteen thousand crore), as per media sources. It has become a serious matter with potential angles of money being laundered through hawala. The individuals booked have largely been found to be repeat offenders, and some of them have been released on bail. The department is currently in the process of terminating the fake GSTIN in Gujarat while other states’ GST officials were also informed. The officials are also probing to find out who are the beneficiaries of ITC gained by using the fake GSTINs.

## ED Attaches properties of former Punjab Minister

In March 2024, the ED filed a prosecution complaint against a former minister (Government of Punjab), under the PMLA before a Special Court in Mohali. The investigation was initiated based on first information report (“**FIRs**”) registered by the Vigilance Bureau, Punjab, regarding various irregularities in the Forest Department of Punjab. The ED had alleged that the former minister had demanded and received significant bribes for issuing permits to cut down Khair trees, transferring / posting officers in the Forest Department, and issuing no-objection certificates. As per media sources, it was revealed during the investigation that he had acquired proceeds of crime amounting to approximately INR 1,67,00,000 (Indian Rupees one crore sixty seven lakh) during his tenure as Forest Minister. Earlier searches conducted on November 30, 2023, led to the seizure of incriminating material, and he was subsequently arrested by the ED on January 15, 2024. Reportedly, the ED has provisionally attached properties worth INR 4,58,00,000 (Indian Rupees four crore fifty-eight lakh) owned by him and his sons under the PMLA. The matter is currently sub-judice and the investigation is currently ongoing as of date.

## Cybercrimes in India

According to the latest National Crime Records Bureau (NCRB) report of December 2023 there has been a 24.4% increase in the number of cybercrime cases registered (65,893 (sixty five thousand eight hundred ninety-three) cases) in 2022, as compared to 2021 (52,974 (fifty two thousand nine hundred seventy four) cases).

Further, to strengthen the mechanism to deal with cybercrimes in a comprehensive and coordinated manner, the Central Government, through Ministry of Home Affairs has set up the ‘Indian Cyber Crime Coordination Centre’ (I4C) to deal with all types of cybercrime in the country. The ‘National Cyber Crime Reporting Portal’ was launched and operationalised in August 2019, as a part of the I4C, to enable public to report incidents pertaining to all types of cybercrimes, with special focus on cybercrimes against women and children<sup>1</sup>. Cybercrime incidents reported on this portal, their conversion into FIRs and subsequent action thereon are handled by the State/union territory law enforcement agencies concerned as per the provisions of the law. The ‘Citizen Financial Cyber Fraud Reporting and Management System’, under I4C, has been launched for immediate reporting of financial frauds and to stop siphoning off funds by the fraudster.

Further, the Minister of State for Home Affairs, in a written reply (dated February 6, 2024) to a question in the Lok Sabha published that more than 1.12 million (one point twelve million) cases of financial cyber fraud were reported on the **Citizen Financial Cyber Fraud Reporting Management System** in 2023, with Uttar Pradesh reporting highest cases.<sup>2</sup>

Separately, the Indian Computer Emergency Response Team (“**CERT-In**”) (established under the Information Technology Act, 2000) functions as the national agency with respect to cyber security incidents and issues alerts and directions / advisories to body corporates in the interest sovereignty and security of India which are mandatory in

<sup>1</sup> Available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1988272> (last accessed on April 25, 2024).

<sup>2</sup> Available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003158> (last accessed on April 25, 2024).

nature. Data from the latest CERT-In report of November 2023 shows that 13,91,457 (thirteen lakh ninety one thousand four hundred fifty seven) cyber security incidents were reported in 2022, however lower than 14,02,809 (fourteen lakh two thousand eight hundred and nine) in 2021. There has been a rising trend in recent years. The number was 2,08,456 (two lakh eight thousand four hundred and fifty-six) in 2018.

Surat City Police launched the nation's first AI-powered chatbot, "Surat Cyber Mitra Chatbot," to combat cybercrime. The chatbot provides instant information, guidance, and reporting options related to online fraud and security. Available in Gujarati, Hindi, and English, it aims to create a safer digital environment for citizens.

## Legislative / Regulatory Developments

On March 20, 2024, the Government of India notified the Fact Checking Unit ("FCU") of the Press Information Bureau ("PIB") under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, with a stated objective of acting as a deterrent to creators and disseminators of fake news and misinformation pertaining to the Government of India. Subsequently, the Supreme Court of India ("Supreme Court") stayed the Union Government's notification of the FCU till the Bombay High Court finally decides the constitutional challenge to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023 ("IT Amendment Rules 2023")<sup>3</sup>. The Supreme Court was hearing a challenge against the Bombay High Court's refusal to stay the notification of the FCU. It observed that the impact of the IT Amendment Rules 2023 on the fundamental right of speech and expression would fall for consideration in the challenge before the Bombay High Court. The decision would also impact social media intermediaries.

Introduction of revamped Penal and Procedural criminal laws i.e., (a) *Bhartiya Nyaya Sanhita, 2023*; (b) *Bharatiya Nagarik Suraksha Sanhita, 2023*; and (c) the *Bharatiya Sakshya Adhinyam, 2023* to replace the existing Indian Penal Code 1860 ("IPC"), Code of Criminal Procedure 1973 ("CrPC"), and Indian Evidence Act 1872, respectively. These new laws will come into force with effect from July 1, 2024 (as notified by the Government of India in February 2024).

## Judicial Discourse

1. The Supreme Court in *CBI v. Kapil Wadhawan*<sup>4</sup> has held that the statutory right to default bail gets defeated upon filing of a charge sheet. Once a charge sheet under Section 173(2) of the CrPC is filed against all the accused within the prescribed time limit, it is immaterial if the investigation remains pending with respect to some of the accused or for production of some documents.
2. The Supreme Court in *Mariam Fasihuddin v. State*,<sup>5</sup> has deprecated the practice of filing supplementary charge sheets based on pre-existing material. Charge sheets filed pursuant to further investigation conducted under Section 173(8) of the CrPC must necessarily be based on new evidence.
3. The Supreme Court dismissed the review petition against its judgment in *Ram Kishore Arora v. ED*<sup>6</sup>, thereby upholding the position that an ED officer providing grounds of arrest to the accused within 24 (twenty-four) hours after arrest (instead of at the time of arrest) is sufficient compliance of Section 19(1) of the PMLA and Article 22(1) of the Constitution of India.
4. The Supreme Court in *R.K. Gupta vs. Union of India*<sup>7</sup> has left open the question whether officers of the Serious Fraud Investigation Office ("SFIO") are police officers under the CrPC. However, the Supreme Court did not interfere with the view of the Delhi High Court that if in the course of an investigation by SFIO, offences under the IPC emerge, then the SFIO has the power to investigate such IPC offences as well.

<sup>3</sup> Editors Guild of India vs. Union of India & Ors. | Special Leave Petition (Civil) No. 6717-6719 of 2024.

<sup>4</sup> 2024 SCC OnLine SC 66.

<sup>5</sup> 2024 SCC OnLine SC 58.

<sup>6</sup> R.P.(CrI.) No. 33/2024 in CrI. Appeal No. 3865/2023.

<sup>7</sup> SLP (CrI.) No. 451/2024.

5. A 7 (seven) judge Constitution Bench of the Supreme Court in the case of ***Sita Soren vs. Union of India***<sup>8</sup> has held that members of the Parliament and state legislatures do not enjoy parliamentary immunity for acts of bribery. It was further opined that the offence of bribery is complete at the point in time when the legislator accepts bribe, and it is agnostic to the performance of the agreed action / promise.
6. A 5 (Five) judge Constitution Bench of the Supreme Court in ***High Court Bar Association, Allahabad vs. State of UP & Ors.***,<sup>9</sup> overruled the previous decision of the court in *Asian Resurfacing of Road Agency v. Central Bureau of Investigation*<sup>10</sup>, which had held that interim orders passed by High Courts staying trials in civil and criminal cases would automatically expire after six months from the date of the order, unless expressly extended by the High Courts. The Constitution Bench held that directions passed in *Asian Resurfacing* were beyond the scope of Article 142 of the Constitution and interfered with the jurisdiction of High Courts under Article 226 of the Constitution.
7. The Supreme Court in ***Tarsem Lal vs. Directorate of Enforcement Jalandhar Zonal Office***,<sup>11</sup> gave a *prima facie* view that an accused under the PMLA cannot be arrested under Section 19 of the PMLA after the Special Court has taken cognizance of a complaint under Section 44 of the PMLA.

## International Developments

### DOJ adopts new whistleblower policy

In March 2024, the United States Department of Justice (“DOJ”) announced the Whistleblower Rewards Program, which seeks to target the corporate and financial misconduct by encouraging individuals to report previously undisclosed wrongdoing. It goes beyond the existing programs of the same genus run by various other enforcement agencies such as the Securities and Exchange Commission (“SEC”) and the Commodities Futures Trading Commission in scope. It targets major misconduct involving the U.S. financial system, foreign corruption cases outside the jurisdiction of the SEC, including Foreign Corrupt Practices Act (“FCPA”) violations by non-issuers and violations of the recently enacted Foreign Extortion Prevention Act, and domestic corruption cases, especially those involving illegal corporate payments to government officials.

### Global Software Company (SAP) pays DOJ and SEC \$222 M to resolve FCPA violations

In January 2024, SAP (a DAX 30 (thirty) listed Company) agreed to pay the DOJ and SEC around \$220 million (US Dollars two hundred and twenty million) in penalties and disgorgement to resolve FCPA violations related to (a) bribing government officials around the world and (b) books / record keeping provisions. SAP had made improper payments (between 2013 to 2018) to government officials at state-owned entities in South Africa and Indonesia to secure and retain software and professional services contracts. The bribes were made directly or through third-party intermediaries, and took the form of cash, political contributions, luxury goods and shopping trips for government officials and their family members. Furthermore, the corporation had inaccurately recorded these bribes as legitimate business expenses. The DOJ’s resolution includes a 3 (three) year Deferred Prosecution Agreement with SAP.

### Transparency International’s – Corruption Perception Index 2023

Transparency International (TI) recently published its 2023 Corruption Perceptions Index (CPI). The CPI evaluates the perceived levels of public-sector corruption in 180 (one hundred and eighty) countries and provides one of the major data points used by compliance professionals, outside counsel, and enforcement authorities in assessing the anti-corruption risk of doing business in particular countries. Countries and territories receive scores ranging between 0 (zero) (highly corrupt) and 100 (one hundred) (very clean). The top 10 (ten) countries for 2023 were Denmark,

<sup>8</sup> Cri. Appeal No. 451 of 2019.

<sup>9</sup> Criminal Appeal No. 3589/2023.

<sup>10</sup> AIR 2018 SC 2039.

<sup>11</sup> SLP (Crl.) No(s). 121/2024.

Finland, New Zealand, Norway, Singapore, Sweden, Switzerland, Netherlands, Germany and Luxembourg. Notably, in the Asia Pacific (APAC) region, India was ranked at 93 (ninety-three) with an overall score of 39 (thirty-nine) for 2023, which is one point lower than 2022.

## European Union notifies Artificial Intelligence Act

On March 13, the European Parliament passed a draft of the Artificial Intelligence (“AI”) Act (“AI Act”) which is designed to delicately balance the promotion of innovation alongside the protection of citizens' rights. While adopting a risk-based approach, it recognizes that different AI applications pose varying levels of risk which may be categorised into the following:

1. Minimal or No Risk AI systems (e.g., spam filters) will follow voluntary requirements and codes of conduct
2. High-Risk AI applications (e.g., medical devices or autonomous vehicles) face stricter requirements to ensure safety, transparency, and accountability

Failure to comply with the provisions of the AI Act may lead to significant fines, up to 6% of the global annual turnover. The AI Act features a phased approach for implementation and enforcement. It will enter into force 20 (twenty) days after its publication in the Official Journal of the EU and become fully applicable 24 (twenty-four) months after its entry into force.

## The Corporate Transparency Act goes into effect in United States

The Anti-Money Laundering Act of 2020, which is part of the National Defense Authorization Act for Fiscal Year 2021 (“NDAA”) and includes the Corporate Transparency Act (“CTA”), became a law in January 2021. The CTA aims to combat illicit activity including tax fraud, money laundering, and financing for terrorism by capturing more ownership information for specific U.S. businesses operating in or accessing the country’s market. Further, the new legislation which went into effect on January 1, 2024, mandates businesses (fulfilling certain criteria) must submit a Beneficial Ownership Information (BOI) Report to the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN), providing details identifying individuals who are associated with the reporting company.

## Anti-Corruption, White Collar Crimes & Investigations (AWCCI) Practice

JSA has a well-established and extensive White-Collar Crimes and Investigations practice which assists clients in dealing with diverse issues arising in relation to fraud, white collar crimes and violation of internal codes of conduct. We represent and advise domestic and multinationals corporates in India and across the globe. The AWCCI practice also complements our other practice areas which provide legal advice to corporates on diverse matters, including representation before other regulators such as the Reserve Bank of India (RBI), the Ministry of Corporate Affairs (MCA), the Department of Industry Policy and Promotion (DIPP) and the Securities & Exchange Board of India (SEBI) and the Directorate of Enforcement (ED) under the (Indian) Prevention of Money Laundering Act, 2002 (PMLA).

Our experienced white-collar teams:

1. undertake independent internal investigations or fact-finding exercise into claims of suspected misconduct including bribery, fraud, white collar crimes, breach of fiduciary and statutory duty, data privacy, and/or conflict of laws.
2. undertake interviewing and discussions with management and other employees of the company (including screening of representatives of agents and third parties) identified for investigation and as witnesses in such investigation.
3. advise on best practices for strengthening compliance programs to prevent and remediate corporate misconduct, including advice on implementation of internal controls to minimise the possibility of fraud, misuse or diversion of company funds, and fund channelisation.
4. advising on treatment of abettors, whistle-blowers and cooperating witnesses.
5. conduct audits on compliance with FCPA/ Bribery Act, Companies Act, 2013 and other anti-corruption laws.
6. draft and review standard documents such as purchase orders, independent contractor agreements, vendor and supplier agreements, distributorship agreements, and agency agreements to decrease exposure under the anti-corruption laws.
7. advise on treatment of permissible payments / receipts such as gifts, hospitality, sponsored travel, use of third-party agents, charitable contributions, and facilitation payments.
8. advising on establishment and implementation of global anti-corruption policies compliant with both local and extra territorial laws, procedures and other controls.

Our white-collar crimes litigation team routinely represent clients from across industries and sectors in different fora including all courts, tribunals and judicial bodies in India, along with arbitrations and other forms of dispute resolution.

**This Newsletter has been prepared by:**



**Rupinder Malik**  
Partner








**Kumar Kislay**  
Partner



**Vibhor Jain**  
Senior Associate



**Archit Sehgal**  
Associate

		
<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>Recognised in World's 100 best competition practices of 2024</p>
		
<p>19 Practices and 19 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners <b>IFLR1000 APAC Rankings 2023</b> ----- Banking &amp; Finance Team of the Year ----- Fintech Team of the Year ----- Restructuring &amp; Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
		
<p>Innovative Technologies Law Firm of the Year 2023 ----- Banking &amp; Financial Services Law Firm of the Year 2022 ----- Dispute Resolution Law Firm of the Year 2022 ----- Equity Market Deal of the Year (Premium) 2022 ----- Energy Law Firm of the Year 2021 ----- Employer of Choice 2021</p>	<p>7 Ranked Practices, 16 Ranked Lawyers ----- Elite – Band 1 - Corporate/ M&amp;A Practice ----- 3 Band 1 Practices ----- 4 Band 1 Lawyers, 1 Eminent Practitioner</p>	<p><b>Ranked #1</b> <b>The Vahura Best Law Firms to Work Report, 2022</b> ----- Top 10 Best Law Firms for Women in 2022</p>  <p>7 Practices and 2 Ranked Lawyers</p>

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

[www.jsalaw.com](http://www.jsalaw.com)



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