

# The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015: A Study

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## Abstract

*Capital as such is not evil; it is its wrong use that is evil. Capital in some form or other will always be needed.*<sup>1</sup>

*Mahatma Gandhi*

The term black money is used to define unaccounted money which is evaded from tax. This money was invested in gold, jewellery and also in lands and buildings. The Black money is the parallel economy which destroys the real economy of the country. In this paper we study what is black money and various measures to check on black money. The legal framework to deal with unaccounted money and we are discussing the summary of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. In last the roles of judiciary dealing with black money.



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## Introduction

Black money or undisclosed money is a blot on the society. It not only disturbs the social and economic fabric but also leads to crime, corruption and tax evasion. Black money evades the moral framework of the society as well. It widens the gap between rich and the poor. It is an organized criminal activity which finances other nefarious crimes like terrorism.

The term 'black money' stands for money earned by violating legal provisions and is kept secret and not accounted for. Hence it is concealed income and undisclosed wealth. It also includes money involved in transactions wholly partly suppressed. The evasion of tax and black money are closely interlinked. Tax evasion leads to creation of black money and black money utilized secretly in business for earning more income leads to tax evasion. Black money is ruinous for the economy for number of reasons. It causes lavish expenditure and conspicuous consumption. It is responsible for the inflationary pressure, shortages, and rise in prices and economically unhealthy speculation in commodities. Further, black money is kept outside the country as deposits in foreign banks which deprive the nation of a part of its wealth which could have been put to productive use here. Black income and tax evasion defeat government's economic policies and at the very least make the implementation of the policies ineffective.<sup>2</sup>

At the International level, this situation can be traced back to World War II. The World War II period was one of the main causes of black money generation because during this period the British Government cut out supplies of industrial goods from foreign countries. So there was a heavy shortage of goods in important product lines. This also enabled businessmen to sell goods which were supply deficient in the black market for exorbitant profits. So this became a practice in the future years and has shaken the economy till today.<sup>3</sup>

## Definition of Black Money

There is no uniform or specific definition of black money. Even under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, black money has not been defined.

Black money in the international scenario is known as Illicit Financial Flows (IFFs).

1. UNODC's (United Nation Office on Drugs and Crimes) research report, estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes, attempts to shed light on the total amounts likely to be laundered across the globe, as well as the potential attractiveness of various locations to those who launder money.<sup>4</sup>
2. Further in 2012 the White Paper On Black Money published by the Ministry of Finance states that in addition to wealth earned through illegal means, the term "Black Money" would also include legal income that is concealed from public authorities: -
  - a) to evade payment of taxes (income tax, excise duty, sales tax, stamp duty, etc.);
  - b) to evade payment of other statutory contributions;
  - c) to evade compliance with the provisions of industrial laws such as the Industrial Dispute Act 1947, The Minimum Wages Act 1948, The Payment of Bonus Act 1936, The Factories Act 1948, and The Contract Labour (Regulation and Abolition) Act 1970; and / or
  - d) to evade compliance with other laws and administrative procedures.<sup>5</sup>
3. According to the Wanchoo Committee Report—Black money is generally used to denote unaccounted money or concealed income and/or wealth as well as money involved in transactions wholly or partly suppressed.<sup>6</sup>

**Aim of the Study**

1. To study the origin and history of black money in India.
2. To study the impacts of black money on Indian Economy.
3. To study different legislation dealing with the black money.
4. To know the role of judiciary in dealing with black money in India.
5. To study the impact of new law (The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015) On Black Money.

**Hypothesis**

The proposed research work is based on the assumption that if the Black Money (Undisclosed foreign income & assets) and Imposition of Tax Act, 2015, is implemented in its true letter and spirit, then the problem of black money in our economy can be controlled to a large extent. The proposed research work will study the act into its entirety.

**Review of Literature**

The proposed study is aimed at deep review of the existing literature on the subject. Several books, encyclopedias, journals, newspapers, magazines, reports, projects and websites are consulted. Some of the important books and articles relating to this subject are mentioned here:

Sukanta Sarkar has conducted a study on the parallel economy in India: Causes, impacts & government initiatives (2010) in which he focused on the existence of causes and impacts of black money in India. According to him, the main reason behind the generation of black money is the Indian political system. So, he concluded that laws should be

implemented properly to control black money in our economy.

Black money in India<sup>7</sup>, by Bagai, S.S., the author in this book defines the impact of black money in India. And also put forth is the effect black money on Indian economy.

The Black Economy in India<sup>8</sup>, by Kumar, Arun, The author critically examines the standard explanations for the causes and consequences of black income generation and the method suggested for curbing it.

The Curious Case of Black Money and White Money, by Varun Chandna<sup>9</sup> Authors say that the black money is the black hole in the Indian economy. The book also throws light on various laws on black money.

Guide to Black Money Act 2015<sup>10</sup>, by Taxmann, The author in this book define existing provisions in the Income-tax Act, 1961 regarding disclosure of foreign assets, salient feature of the Act, difference between Undisclosed Foreign Asset versus Undisclosed Foreign Income and Black Money versus Red Money.

Demonetisation and India's Elusive Chase for Black Money Note Bandi<sup>11</sup> by R. Ramakumar in this author try to define effect of demonetization after November 2016 Note Bandi. It shows the impact of demonetization on different people, government and economy.

Black Money Act—an Analysis<sup>12</sup> by CA. T.P.Ostwal, CA. Kuntal Dave, CA. Anil Doshi, This book focuses on the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is a brand new law brought in by the Government to bring back Indian Residents' undisclosed assets lying outside India. The Authors have dealt with the subject in-depth and clarified clause-wise on various issues regarding the Act; the compliance opportunity; the consequences and the applicability.

**Black Money in India**

Black money in economic terms means 'unrecorded gains'.<sup>13</sup> In India, black money refers to funds earned on the black market, on which income and other taxes have not been paid.<sup>14</sup> In other words, it is income which has escaped taxation. It may be hoarded in cash, but eventually gets itself converted into various assets like property, jewelry and durable consumer goods. The money that is generated in the black market and which has partly or fully escaped assessment is termed as black money.<sup>15</sup>

Tax evasion problem has been there from colonial times and till 1960's it was not this rampant as income tax rates were around 30%. In 1970's due to repeated draughts, heavy investments in agriculture and after effects of wars government increased maximum income tax rates to the levels of 85% with surcharge of 15%. This resulted in backlash from businesses who found it compelling to conceal income and this was the time when capital flight from India to low tax countries, more particularly to tax heavens picked up. This was also the time when strong underground networks such as hawala developed.<sup>16</sup>

In 1972, the Wanchoo Committee cautioned: "black money is a cancerous growth in the countries' economy which if not checked in time, will surely lead to its ruination; and the situation has been worsened by years".<sup>17</sup> Moreover, in 1985, the National Institute of Public Finance and Planning (NIPFP) estimated the size of the black economy at 20% of the legitimate economy for 1980-81. Later, economist G.B Gupta reckoned the black economy to be worth 42% of GDP for 1980-81, and 51% for 1987-88.<sup>18</sup> Economist Arunkumar estimated the black economy in 1995 at 40% of GDP.<sup>19</sup> However, KPMG estimated it to be nearly 30 per cent of the GDP and stated that a part of that money could be getting laundered. At the economic summit in 2000, the then Central Vigilance Commissioner (CVC) estimated that black money accounted for 40% of GDP.<sup>20</sup>

In White Paper on Black Money, India has made the several proposals to tackle its underground economy and black money like joining the global crusade against black money; creating appropriate legislative framework; setting up institutions for dealing with illicit money; developing systems for implementation; imparting skills to personnel for effective action.

#### **Some Measures to Check on Black Money**

##### **The Tax Information Exchange Agreements**

To curb black money, India has signed Tax Information Exchange Agreements (TIEA) with 10 countries - Bahamas, Bermuda, the British Virgin Islands, the Isle of Man, the Cayman Island, the British island of Jersey, St Kitts and Nevis, Monaco and the Marshall Islands where money is believed to have been stashed away. India and Switzerland, claims a report, have agreed to allow India to routinely obtain banking information about Indians in Switzerland.<sup>21</sup>

##### **The Voluntary Disclosure Scheme (VDS)**

The Government has floated various voluntary disclosure schemes to determine the black money. In this scheme any person holding money can declare his income by paying tax at the highest slab rates, without paying any penalty. Moreover, the person declares such income will not be questioned about his income and identity will not be disclosed. These scheme have been launched from time to time like 1951, 1965, 1976, 1985, 1997.<sup>22</sup>

##### **Demonetization**

In demonetization, existing currency notes are cancelled and there are replaced with new series of notes. In 1978, government launched demonetization of such high denomination notes. Under this scheme, a person could exchange these currency notes with low denomination after explaining the source of income. According to RBI Report, the high denomination notes as on that data aggregated to Rs 146 crore notes worth Rs 125 crore were exchanged and the rest of Rs 21 crore were not exchanged and hence was black money. So, black money of Rs 21 crore was unearthed by the scheme.<sup>23</sup>

##### **Measures to Check Tax Evasion**

One of the basic causes of black income generation and then its conversion into white money

in tax evasion. Therefore, plugging loopholes in tax evasion by large number of legal and administrative measures are undertaken. Most of these measures were based on the recommendations of various committee and commission.<sup>24</sup> Taxation Enquiry Commission (1953), Administrative Reforms Commission (1969), Direct Tax Enquiry Committee (1971).

##### **Permanent Account Number (PAN)**

India has tried to combat tax evasion by requiring an identification number for all major financial deals. The Permanent Account Number (PAN) is a compulsory 10 character number issued to taxpayers by the tax department. But many transactions, especially those related to property, are conducted in cash and are unlikely to be reported.<sup>25</sup> The Government has introduced following committee to combat the menace of the parallel economy:-

Ayers Committee (1936), The Wanchoo Committee's (1972), Direct Tax Laws Committee' in June 1977 (DTLC), MC Joshi Committee (2011) On Black Money,

The other committees were the Dangli Committee on Controls and Subsidies (1980), The Rajah Chelliah Committee, and the National Institute of Public Finance and Policy (1985) etc.

##### **Legal Framework to Regulate Black Money in India**

As discussed, previously black money is a serious hindrance to the country. Since Independence legal Initiatives have been taken to deal with the problem of Black Money in India.

##### **The Indian Penal Code 1860<sup>26</sup>**

Under the Indian Penal Code chapter IX deal with offence committed by public servant or by others though relating to public servant. However, it was noticed that provisions of Indian Penal Code were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, the Prevention of Corruption Act, 1988 was enacted and the provisions relating to section 161 to 165A Indian Penal Code have been deleted from Indian Penal Code.

##### **The Income Tax Act, 1961<sup>27</sup>**

Under the Income Tax Act income earned and not disclosed is taxable and also subject to penalty and interest as well as prosecution. The amount recovered may even exceed the entire undisclosed income.

To check the introduction of black money in the accounts, it has been provided that the nature and source of any sum credited as share capital, share premium, etc. in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the said company in the hands of the resident shareholder. To create greater deterrence against black money, unexplained amounts deemed as income of a taxpayer under sections 68, 69, 69A, 69B, 69C, 69D and 94A of the Income Tax Act 1961 will be taxed at the maximum marginal rate without any allowance or deduction.

**The Special Bearers Bond's (Immunities and Exemptions) Act, 1981<sup>28</sup>**

An Act to provide for certain immunities to holders of Special Bearer Bonds, 1991 and for certain exemptions from direct taxes in relation to such bonds and for matters connected therewith. Whereas for effective economic and social planning it is necessary to canalise for productive purposes black money which has become a serious threat to the national economy. With a view to such canalisation the Central Government has decided to issue at par certain bearer bonds to be known as the Special Bearer Bonds, 1991, of the face value of ten thousand rupees and redemption value, after ten years, of twelve thousand rupees. And it is expedient to provide for certain immunities and exemptions to render it possible for persons in possession of black money to invest the same in the said Bonds.

**The Narcotics Drugs and Psychotropic Substances Act, 1985<sup>29</sup>**

Drug trafficking gave rise to black money, as it was proceeds from crime. The illicit payments made by drug buyers in India is not only leading to generation of black money within the country, but also resulted in money laundering when the money is taken out of the country. Several amendments made in the Narcotics Drugs and Psychotropic Substances Act widens the scope for forfeiture of illegally acquired property.

**The Prevention of Corruption Act, 1988<sup>30</sup>**

Corruption is a main cause of black money it is necessary to make a strict law for the prevention of the corruption. For this purpose several amendments have been made in the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952 and sections 161 to 165 of Indian Penal Code. The sole idea was to bring all relevant provisions in a single Act. Finding that bribery and corruption among public servants had considerably increased during and after Second World War and many unscrupulous officers had amassed huge wealth, and the existing provisions of the Indian Penal Code and the Criminal Procedure Code were inadequate to tackle this problem, the Prevention of Corruption Act, 1947 was passed.

The 1988 Act enlarged the scope of the term 'Public Servant' and included a large number of employees within its ambit.

**The Benami Transactions (Prohibition) Act, 1988<sup>31</sup>**

To deal with the problem of black money, especially in the real estate sector, the government has introduced a Bill (Benami Transaction (Prohibition) Amendment Bill, 2015) to target transactions that are carried out in other people's names. The Bill seeks to ensure that if any person enters into a benami transaction in order to evade tax or avoid payment to creditors, the ultimate beneficiary owner and persons who abet or induce any person to undertake such a transaction, suffer rigorous imprisonment.

**The Prevention of Money Laundering Act, 2002<sup>32</sup>**

The main objectives of Prevention of Money Laundering Act is to prevent and control money laundering, to confiscate and seize the property obtained from the laundered money and to deal with

any other issue connected with money laundering in India.

Before the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Prevention of Money Laundering Act, 2002 played an important role to control black money. The Prevention of Money Laundering Act, 2002 was a very peculiar legislation. As per the provisions of the Act, banks and financial institutions will have to report to the government all suspicious transactions.

**The Whistle Blowers Protection Act, 2014<sup>33</sup>**

This Whistle blower Protection Act is made to receive complaints against corruption which is the main cause of black money. This Act seeks to provide adequate protection to the person who making a complaint of corruption and misuse of discretionary powers etc. the competent authority for the complaint is the Prime Minister if complaint against member of the Union Council of Ministers, chief minister if complaint against member of council of minister of State and UT, chief Justice of the High Court if complaint against any district judge, the Central Vigilance Commission if complaint against any Central Government Servant and State Vigilance Commission in case of complaint against state government servant.

**The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015<sup>34</sup>**

The Act was enacted on 26th May 2015 and it came into force on the 1st day of April, 2016. This is an Act to make provisions to deal with the problem of black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.<sup>35</sup>

According to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 "Undisclosed foreign income and asset" means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in the Act, and computed in the manner laid down in section 5.<sup>36</sup>

"Charge of Tax" determines every year from the 1st day of April, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent. of any undisclosed money.<sup>37</sup>

**Tax Authorities and Jurisdiction<sup>38</sup>**

The tax authority which is define under the section 116 of the Income Tax Act 1995 and is acting as the supervision and control of Central Board of Direct Taxes. The jurisdiction of a tax authority under this Act shall be the area in which the assessee resides or carries on its business and principle office of business.

**Penalties**

The Act provides penalty for failure to furnish in return of income, information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India.

If any person by any means furnishes inaccurate details about an asset in the return of income under section 139 of this Act, the assessing officer can direct him to pay penalty up to Rs. 10 lacs.

Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to five hundred thousand rupees at any time during the previous year.<sup>39</sup>

#### **Penalty for Default in Payment of Tax Arrear**

Every person who is an assessee in default or an assessee deemed to be in default, as the case may be, in making payment of tax, and in case of continuing default by such assessee, he shall be liable to a penalty of an amount, equal to the amount of tax arrear.

An assessee shall not cease to be liable to any penalty under sub-section (1) merely by reason of the fact that before the levy of such penalty he has paid the tax.<sup>40</sup>

#### **Prosecutions:**

##### **Punishment for Failure to Furnish Return in Relation to Foreign Income and Asset**

If a person fails to furnish a return for the foreign undisclosed asset under this Act then he shall be liable for the rigorous imprisonment of for a term which shall not be less than six months but which may extend to seven years and with fine.<sup>41</sup>

This same provision shall be apply in the case of failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India and the same provision will also apply in the case of False statement given by assessee in case of verification.<sup>42</sup>

##### **Punishment for Willful Attempt to Evade Tax:**

In the above mentioned default, the assessee shall be liable for rigorous imprisonment of for a term which shall not be less than three years but which may extend to ten years and with fine.<sup>43</sup>

##### **Role of Judiciary in Dealing with Black Money in India**

The courts in India are playing a proactive role in curbing black money in India and in the punishment of the offenders.

In case of *Mahabir Metal Works Pvt. Ltd. and...Vs Union of India and Anr*<sup>44</sup>. It was held that the Direct Taxes Enquiry Committee chaired by Shri Justice K. N. Wanchoo, retired Chief Justice of India, was appointed by the Government in March 1970, inter alia. "(A) to recommend concrete and effective measures : (i) to unearth black money and prevent its proliferation through further evasion; (ii) to check avoidance of tax through various legal devices, including the formation of trusts : and (iii) to reduce tax arrears."

In the case of *R.K. Gargand Ors.Vs Union Of India (UOI) and Ors.*<sup>45</sup> The court observed that there is no immunity from taxation given to the black money which may be invested in Special Bearer Bonds. That money remains subject to tax with all consequential penalties, if it can be discovered independently of the fact of subscription to or acquisition of Special Bearer Bonds.

Hon'ble Supreme Court observed its opinion on the menace of black money and its ill effect in case of *Atar Singh Gurmukh Singh Vs. ITO Ludhiana*.<sup>46</sup> Held that the generation of black money through tax evasion throws a greater burden on the honest tax payer and leads to economic inequality and concentration of wealth in the hands of unscrupulous few in the country. The existence of black money is to a large extent responsible for inflationary pressures, shortages, rise in prices and economically unhealthy speculation in commodities.

In *Ram Jethmalani and Ors.Vs Union of India*.<sup>47</sup> On 4th July, 2011, on I.A. No.1 of 2009 in the Writ Petition several directions were given. The said order was divided into three parts. The first part of the order dealt with the alleged failure of the Central Government to recover the large sums of money kept in such foreign banks and in tax havens having strong secrecy laws with regard to deposits made by individuals. The second part dealt with the unlawful activities allegedly funded out of such deposits and accounts which were a threat to the security and integrity of India.

##### **HSBC Discloser Case**

The Income Tax department has slapped 121 cases for prosecution of those entities whose names have appeared in the HSBC Geneva bank list, even as undisclosed income to the tune of Rs 4,800 crore has been brought under tax net in these cases. Sources said the cases have been filed in courts in Delhi, Mumbai, Bangalore, Ahmedabad and Goa before the closure of the just concluded financial year 2014 -15 on March 31.<sup>48</sup> On 2nd Nov 2015, HSBC whistleblower HerveFalciani said he is willing to "cooperate" with the Indian investigative agencies in black money probe but would need "protection".<sup>49</sup>

##### **Conclusion**

The black money is a big problem in today's world. As India demonetization of all rupees 500 and rupees 1000 and issuance of new currency notes of 500 and 2000 rupees with object to fight against black money, corruption and terror funding but still the problem is same.

It is concluded that this paper contains various laws controlling unaccounted money. This black money rise in price as a result it is difficult for the common man to earn money and spend for their family. The corruption is a main cause for black money it is the duty of government to provide good service for the common man on lower price so they cannot try to raise money from any illegal means.

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