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[Please See Annexure:R-12 to R-18, in Vol.VI]

4.7.18 Since it became functional in 2005, the FIU-IND has been regularly disseminating substantial financial intelligence relating to tax evasion and money laundering to the CBDT, CBEC, DRI, DGCEI, and ED. Information has also been shared with financial-sector regulators like the RBI, SEBI, and the IRDA for assistance in investigation of cases of financial irregularities as well as for formulation of tighter regulatory policies in the respective sectors supervised by them. Year-wise details of the number of STRs disseminated by the FIU-IND to these law enforcement agencies and regulators are given in Table 4.8.

Table 4.8 Year-wise Details of Number of STRs Disseminated by the FIU-IND 2006-2012

Agency	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
ED	35	68	90	221	317	1,615	2,346
CBDT	254	677	1,766	5,360	7,475	10,956	26,488

CBEC, DRI, and DGCEI	10	14	26	96	121	1,130	1,397
RBI	1	2	5	19	8	51	86
SEBI	27	35	30	76	59	117	344
IRDA	1	6	7	5	2	21	IRDA

4.7.19 The FIU-IND has also been regularly responding to request for information from revenue authorities and anti-money-laundering agencies like the CBDT, ED, and CEIB. In a large number of cases, information has been made available to these agencies by searching the database of the FIU-IND or by obtaining the information from the reporting entities. Year-wise break-up of requests from intelligence and law enforcement agencies seeking information from the FIU-IND is given in Table 4.9.

Table 4.9 Year-wise Break-up of Requests for information from Intelligence and Law Enforcement Agencies

Subcategory	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Requests Received from Intelligence Agencies	40	87	190	226	428	473	1,444
Requests Received from Law Enforcement Agencies	0	13	42	118	186	117	476
Total	40	100	232	344	614	590	1,920

4.7.20 In several cases, information has been obtained by the FIU-IND from its counterpart FIUs in

other countries. Table 4.10 shows year-wise figures of requests made to foreign FIUs on behalf of intelligence and law enforcement agencies.

Table 4.10 Year-Wise Break-up of Requests Made to Foreign FIUs 2006-2012

Exchange Type	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Information Requests Made to Foreign FIUs	2	13	17	46	67	46	191

G. Cases under the PMLA

4.7.21 The PMLA came into force with effect from 1 July 2005. The Directorate of Enforcement has so far registered 1437 cases for investigation under the PMLA. During investigation, 22 persons were arrested and 131 provisional attachment orders issued in respect of properties valued at Rs. 1,214 crore. The

Directorate has filed 38 Prosecution Complaints in PMLA-designated courts for the offence of money laundering.

4.7.22 As regards the Foreign Exchange Management Act (FEMA) which came into force with effect from 1 June 2000, the statistics for the period 1 June 2000 to 31 March 2012 are as follows:

(a)	No. of Cases Registered	:	23,118
(b)	No. of Show Cause Notices Issued	:	4,819
(c)	No. of Cases Adjudicated	:	3,259
(d)	Amount of Penalties Imposed	:	Rs. 1,678 crore

The Way Forward

5.1 Introduction

5.1.1 A comprehensive analysis of the factors leading to generation of black money in India along with the various measures attempted to counter it till date makes it apparent that there is no single panacea that can rid society of this menace. At the same time, it is not impossible to curb, control, and finally prevent the generation of black money in future as well as repatriation of black money, if a comprehensive mix of welldefined strategies is pursued with patience and perseverance by the central and state governments and put into practice by all their agencies in a coordinated manner.

5.1.2 Given the democratic nature of governance in India, the first pre-requisite for a long term strategy to succeed is its public acceptance, based on broad based political consensus and the commitment to implement it. The strategy outlined in this document is not the considered view of the

Government of India. Through this document the government is placing the various options before the general public in order to arrive at a well considered strategy to address the issue. It is expected that all stakeholders who are likely to benefit from prevention and control of black money generation will support this important initiative and provide inputs for finalising it.

5.2 Strategies for Curbing Generation of Black Money from Legal and Legitimate Activities

5.2.1 It would be fair to say that most of those involved in generation of black money are not indulging in activities that are criminal in themselves. For a business owner creating black money by evading taxes, preventive strategies need to reduce the incentives for evading taxes and create credible and effective deterrence. In essence, the strategies in such cases treat the person generating black money as a rational economic agent who can be made to comply with the law by creating appropriate

incentives and disincentives in favour of reporting and tax compliance. Such a strategic mix will consist of the following four different pillars.

A. Reducing disincentives against voluntary compliance

B. Reforms in vulnerable sectors of the economy

C. Creating effective credible deterrence

D. Supportive measures

A. Reducing Disincentives against Voluntary Compliance

5.2.2 There can be several factors that disincentivise a person against reporting her/his income or wealth. Primarily, they consist of the cost that the person incurs in complying with the law and its reporting regulations. These costs consist of two major components, the tax that needs to be paid as part of the compliance and the costs that need to be incurred in addition to the taxes for complying with the regulatory obligations. Both of them are

important disincentives and reducing them can improve disclosure and lessen the generation of black money.

A.1 Rationalization of Tax Rates

5.2.3 One of the most important factors in ensuring tax compliance is the tax rate. The Laffer curve[1] postulates that when the tax rates on producer surplus approach 100 per cent, then tax revenues may approach zero, since economic agents would not be left with any incentive to produce. The higher the tax rate, higher is the disincentive against tax compliance and greater the propensity to generate black money. Thus reducing tax rates, particularly the maximum marginal rates of progressive taxes, can increase tax revenue in two ways, first by increasing tax base and second by increasing compliance with the tax rules and thus can be one of the major policy tools for curbing the generation of black money.

5.2.4 In the past two decades, India has followed the approach of gradually bringing down tax rates of all major taxes imposed by the central government. The rising tax revenues as a result of this approach reflect the greater voluntary compliance and apparent success of the policy measures.

5.2.5 While rationalization of tax rates remains one of the fundamental and core strategies for curbing black money generation, the long-term success of this simple approach is dependent upon other strategic pillars that include creation of credible deterrence and necessary changes in public perception about tax evasion. If the tax administration is relatively weak, no tax rate changes can ensure compliance.

A.2 Reducing Transaction Costs of Compliance and Administration

5.2.6 The high transaction costs associated with compliance with the law and regulation is the other major disincentive that hinders compliance and

pushes people towards generation of black money. It includes the opportunity cost of time and resources to the tax payer and tax administration. In a way these costs are far more significant than the tax, because unlike taxes, which are in the nature of transfer from the private to the public sector, these costs are real costs to the society.

5.2.7 The transaction costs consist of the costs of compliance, which are borne by the citizens or taxpayers and the costs of administration, which are incurred by the state, but eventually borne by the citizens by way of taxes that finance such expenditure. Among the two, the costs of compliance are generally more important since they are incurred by a larger number of economic agents. Interestingly, while the budgetary process and administrative and regulatory oversights are highly effective in controlling the costs of tax administration, the same may not always be the case with the costs of compliance. Given the fact that the costs of compliance can be a major disincentive against

compliance and reporting, reducing them will remain one of the most significant aspects of any strategy mix directed against black money generation. In the area of tax administration, the cost of collection in India has traditionally been one of the lowest in the world, remaining below 1 per cent for several years now. In most developed economies such costs hover around 1 to 2 per cent. The low cost of collection in Indian tax administration can be interpreted both as a positive achievement (due to lower burden on the exchequer) as well as negative development as it suggests lack of infrastructure and resources available to tax administrations, which in turn induces increased cost of compliance for the taxpayer. It may be possible in India too to significantly cut down the costs of compliance borne by the citizens, by raising the cost of administration to some extent. Simply put, investments in improving administrative facilitation of compliance with tax and other regulatory measures may lead to positive gains for the society.

5.2.8 One of the major opportunities for reduction in transaction costs has been created by the recent advancements in the area of information and communication technology. Both the direct and indirect tax administrations have significantly brought down the costs of compliance by various measures of egovernance, electronic reporting, e-filing of refunds, computerized central processing of returns, and electronic issue and transfer of refunds. This has become possible due to the successful allocation of PAN numbers and use of electronic services. Future strategies should strive for further development of electronic and net-based services and for improving the resources of tax administration, with the ultimate aim of reducing the cost of compliance for the taxpayer.

A.3 Further Economic Liberalization

5.2.9 Non-tariff barriers to economic activity are generally worse than tariff barriers. Where one cannot get a permit to undertake a legitimate

activity, the transaction costs approach infinity, and create insurmountable incentives for unreported and unaccounted activities that will inevitably generate black money. The successive waves of economic liberalization during the last two decades have attempted to do away with such non-tariff barriers. The process must be relentlessly continued. The Electronic Delivery of Services Bill 2011 that seeks to provide for electronic delivery of public services by the government to all persons to ensure transparency, efficiency, accountability, accessibility, and reliability in delivery of such services has been tabled before Parliament in December 2011. Once it is enacted, it will provide a major impetus towards this objective.Together, these measures can significantly cut down the transaction costs of compliance with the regulatory regime and reduce the disincentives against voluntary compliance, thereby restricting the generation of black money from legitimate economic activities.

B. Reforms in Sectors Vulnerable to Generation of Black Money

5.2.10 It can be seen from the discussions in the earlier sections that a large proportion of black money is generated from certain vulnerable sectors of economy, suggesting that effective reforms in those sectors can be a major strategy for curbing generation of black money in future. One of the best examples in this regard is gold trading, which was one of the major sources of black money generation and even crime prior to the reforms induced in that sector. While gold inflows into India remain persistently high, gold smuggling is no longer the menace as it used to be a few decades earlier. Similar or more effective reforms of other vulnerable sectors like real estate can yield a significant dividend in the form of reducing generation of black money in the long term.

B.1 Financial Sector

5.2.11 The financial sector is the most important sector in the economy when it comes to transfer of funds generated through whatever means into further productive activities. Therefore it is one sector that cannot possibly remain untouched by black money. Often black money enters it as part of financial instruments or other processes, which at times involve money laundering thereby highlighting the potential of this sector in detection and prevention of black money along with its sources and perpetrators. Fine tuning of financial regulation therefore remains one of the key areas in creating deterrence against generation of black money and detecting black money in the process of being laundered.

5.2.12 Significant progress made in the efficacy of the oversight mechanism for financial markets needs to be pursued further. For this purpose, it is essential that the relevant authorities are able to get trained manpower with proper domain knowledge of financial investigation and oversight. One of the solutions could be to place efficient officials with requisite

domain knowledge and skills from the financial investigative agencies in the operations / vigilance machinery of banks and financial institutions to keep proper vigil and ensure that rules and regulations are followed in these institutions.

5.2.13 In the last two decades, many foreign entities, including banks, financial institutions, and fund transfer entities have established businesses in India. A Committee headed by the Chairman, CBDT, has recently reported that Indian tax residents have been carrying out substantial monetary transactions through these entities or with their branches abroad. The Committee also recommended that India insist on entities operating in the country to report all global transactions above a threshold limit. For this purpose, appropriate laws, rules or contractual / licensing arrangements with these entities may be framed and implemented, as has been done in some other countries. In the Finance Bill 2012 a beginning has been made by making filing of return of income mandatory for every resident (excluding not ordinary

residents) having any assets or banking accounts located outside India even if s/he does not have a taxable income. Return forms have been notified in this regard. Similar strengthening of other reporting regimes can allow appropriate systems for flagging of dubious transactions in future and improve the probability of their timely detection and prevention.

B.2 Real Estate

5.2.14 The real estate sector in India constitutes about 11 per cent of the GDP. Investment in property is a common means of parking unaccounted money and a large number of transactions in real estate are not reported or are under-reported. This is mainly on account of very high levels of property transaction taxes, commonly in the form of stamp duty. High transaction taxes in property are one of the biggest impediments to the development of an efficient property market. With tax rates of over 5 per cent being imposed as stamp duty on buying of property, which otherwise also involves high transactions costs

in terms of search, advertising, commissions, registration, and contingent costs related to title disputes and litigation, the property market remains one of the most inefficient asset markets in India. Unless the underlying distortions in this market are taken care of by appropriate reforms, it may be difficult to prevent such misuse.

5.2.15 As per the division of powers between the states and the centre, the real estate sector has largely been left to the state governments to regulate and tax. Even after the 73rd and 74th amendments to the constitution of India which recognized local rural and urban bodies as the third tier of government, the power to legislate with respect to real estate properties and transactions therein remains with the states. Different state governments have undertaken reforms in this sector at differing pace, while their implementation is further subject to the capacity and commitment of the respective local urban bodies.

5.2.16 The role of the central government in reforms of the real estate sector is generally limited and advisory in nature. However, this has not prevented the Government of India from initiating steps to incentivize reforms. Its flagship programme, the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), being implemented since 2005-06 aims to support urban infrastructural development by providing both monetary and non-monetary support, for reforms in different sectors of the local economy. It includes reforms of the stamp duty regime to restrict it to no more than 5 per cent. Some states have carried out this reform, but others are still persisting with very high stamp duty regimes. For states that are resource constrained there is a case for identifying and implementing adequate revenue-neutral substitutes to facilitate the rationalisation of stamp duties.

5.2.17 There are many other pending reforms required for the emergence of an efficient competitive real estate market. These include repeal of the Urban

Land Ceiling Regulation Act (ULCRA), reforms of the Rent Control Act that will balance the interests of tenants and owners and free properties of its distortions, revision of bye-laws to streamline the approval process for construction of buildings, development of sites, simplification of legal and procedural frameworks for conversion of land from agricultural to non-agricultural purposes, introduction of the Property Title Certification System in Urban Local Bodies, introduction of computerised process of registration of land and property, introduction of e-governance in local administration and tax payments, creation of computerised fiscal cadastres and rationalisation of property tax designs. Each of these areas had been given a thrust by making it conditional to the release of financing for urban projects by the central government. Evidence suggests that the mission has achieved considerable success. However, a lot more needs to be done in this regard. There may also be a case for integration of local urban authorities in a nationwide digital

database and sharing of data and information with state and central agencies.

5.2.18 The current provisions of the direct tax legislation provide for mandatory furnishing of the tax identification number by the buyer and seller of an immovable property if the value exceeds Rs 5 lakh. Also, every registry of property is required to furnish annually information regarding transactions in immovable property if the value exceeds Rs 30 lakh. However, as many registrar offices still operate on a manual system, there are a number of gaps and lapses in the reporting of such transactions.

5.2.19 To reduce the element of black money in transactions relating to immovable property and facilitate focused action based on actionable intelligence by monitoring agencies, simple reporting systems can be evolved that will facilitate the development of a nationwide database. Such a database should be computerdriven with minimal

interface between the authorities and the people, and accessible to all financial regulatory authorities.

5.2.20 One of the measures for deterring use of the real estate sector for generation and investment of black money could be the provision of deducting tax at source on payments made on real estate transactions and mandating it as a pre-condition for registering of the transacted property. The provisions of tax collected at source on the developers of the property can also be considered as a possible policy measure. Electronic payment and electronic reporting can mitigate the compliance burden.

5.2.21 Further, to reduce the element of black money in transactions relating to immovable property, the provision of no objection certificate (NOC) may be introduced in the income tax law with safeguards to reduce administrative complications and increased ease of compliance, so that an appropriate and uniform database is set up and a proper national-level regulation also put in place. The

new system should be computer-driven with minimal interface between the tax authorities and taxpayers, and enforced by a dedicated unit within the investigative machinery of the income tax department on the basis of pre-determined parameters and standard operating procedures.

B.3 Bullion and Jewellery Sector

5.2.22 Bullion and Jewellery is an important sector for both generation and consumption of black money and is also targeted by black money holders looking towards protecting the value of their black money from inflationary depreciation. Moreover, a fairly large number of transactions in this sector remain totally unreported and therefore facilitate investment and consumption of black money.

5.2.23 There is also urgent need to improve the reporting and monitoring systems in this sector. Since there are a number of financial laws already applicable to such businesses, it can be achieved to some extent through amendments to or modifications

of the laws governing income tax, and customs duty. In this regard, the Income Tax Act has made it mandatory to obtain PAN or Form-60 / Form-61 for purchase of bullion above Rs 5 lakh. However, given the need to catch all transactions, the best bet would be the through the proposed GST Act. This is an area that needs careful analysis in terms of efficacy and assessment of costs and benefit before the required regulations are enacted.

B.4 Cash Economy

5.2.24 Cash has always been a facilitator of black money since transactions made in cash do not leave any audit trail. So far, efforts to regulate and control cash transactions have been constrained due to two reasons. The first is that the poor have to deal in cash, particularly in the rural sector, and accordingly payments on account of labour wages or those made to rural artisans and institutions need to be made in cash. Second, the costs of transaction imposed by any regulations are likely to spread across the

economy and affect both consumers and producers, thereby leading to resistance and lack of support for such a move.

5.2.25 However, given the primary importance of cash in relation to both generation and use of black money, there is no alternative but to target cash transactions in a way that will not affect those complying with the law, while making it difficult for those intending to generate and utilise black money. This will require keeping fairly high transaction limits and exempting those with a reasonable audit trail at either end of the transactions. Further work needs to be done in this regard in future by way of legal curbs and regulations that can restrict the generation and flow of black money within the economy.

5.2.26 As of now there are no legal restrictions to keeping very large amounts of cash with oneself or transporting it from one place to another. One is neither required to report it nor provide any explanation for it. There have been suggestions that

and discouraging unaccounted activities. Towards this end, some important initiatives have already being taken which include the reduction of the validity period of cheques and demand drafts from six to three months with effect from 1April 2012, which will discourage discounting of negotiable instruments. Payments by debit and credit cards through Indian e-service intermediaries like 'RuPay'2 can further bring down the costs of using such cards, improve their acceptability, and thereby encourage payments in these modes and reduce the cash economy. It is imperative that payment of wages and salaries in the private sector should also be through banking channels and should become cashless, in line with the government objective of financial inclusion. Government can also deliberate providing tax incentives for use of credit/debit cards as practised in Republic of Korea. Provisions for collection of tax at source at a low level on cash purchases may also be considered as a possible policy option.

the government may consider amending existing laws, including the Coinage Act 2011, The Reserve Bank of India Act 1934, FEMA, and the Indian Penal Code, or enacting an entirely new statute aimed at regulating the possession and transportation of cash above a particular threshold limit. This may include creating a limitation on cash holdings for private use, as well as provisions for confiscation of cash held beyond such prescribed limits. However, such laws need a broader political consensus to emerge for their acceptance in Parliament.

5.2.27 Another important measure in this regard could be the promotion of banking channels including use of credit and debit cards, since they leave adequate audit trails and hence disincentivise black money generation. The opposite is true of trade practices that block the audit trail, such as cheque discounting, which can be discouraged applying the same logic. With electronic transfer facilities being available to trade, one can foresee this as one of the major thrusts towards strengthening accountability

B.5 Mining and Allocation of Property Rights over Natural Resources

5.2.28 Natural Resources including mines, forests, land, water, and spectrums belong to the country as a whole, but their efficient allocation and utilization demands that government assigns property rights to private parties in lieu of financial payments made to the public exchequer. This process calls for significant improvement in transparency and public accountability and appropriate price discovery mechanisms, in the absence of which these sectors can become vulnerable to illegal encroachments, while their allocation at highly subsidised rates can lead to windfall gains for the allottees. There is therefore need for comprehensive reforms requiring coordination and consensus among states and the centre.

5.2.29 In order to ensure transparent and efficient allocation of natural and man-made resources, oversight in the form of comprehensive regulations,

independent regulator, and appointment of ombudsmen for grievance redressal, particularly for scarce resources - as in land, minerals, and forests - can be considered as a remedy.

B.6 Equity Trading

5.2.30 While equity trading has witnessed large-scale reforms during the last couple of decades, it has also seen new challenges being faced by the regulators consisting of cartel-based price manipulation and profiteering, proxy investments through conduits, and routing of investments through tax havens in case of FIIs. Among these, the issue of investing through tax havens is dealt with subsequently in this chapter, but there are many other areas in this sector that need further reforms.

5.2.31 The RBI has already strengthened the implementation of KYC norms. In this regard, there have been suggestions that it could consider stricter implementation of these norms and limit the number of accounts that can be introduced by a single person

and the number of accounts that can be maintained in the same branch by any entity and maintain vigilance about the same address being used for opening accounts in different names. Stricter adherence to, and enforcement of, KYC norms can help ensure proper compliance by banks and financial institutions. The government, as well as the RBI, also needs to put a better regulatory framework in place and act promptly against errant persons / institutions.

5.2.32 To prevent misuse of 'off-market' and 'dabba-trading' or trading outside the recognised stock exchanges, further amendments in the income tax law may need to be introduced to allow losses in offmarket share transactions to be set off only against profits derived from such transactions. Such a measure may create barriers to misuse of such trading and plug an important loophole for generation of black money.

B.7 Misuse of Corporate Structure for Generation of Black Money

5.2.33 The various ways in which corporate structure can be misused to evade taxes have already been discussed in detail in preceding chapters. It would suffice to state here that efforts made by the Government of India to create greater transparency and facilitate exchange of information need to be carried further. There is also need to create a robust database of remittances made by corporates out of India and carry out an analysis of their backward and forward linkages in order to understand the nature and legitimacy of the transmitted funds. The FIU-IND may be empowered by law to receive reports (similar to other reports submitted to it) on all international fund transfers through the Indian financial system, on the lines of the FIUs of Australia and Canada.

B.8 Non Profit Organisations and the Cooperative Sector

5.2.34 There are several fiscal and regulatory privileges under different laws available to non-profit and cooperative organisations. Their income, subject to various conditions, is treated differently for taxation purposes from that of privately owned profit-oriented concerns. This creates incentives for potential evaders to camouflage their concerns as non-profitable, charitable, or cooperative in nature. This can only be dealt with through a multi-pronged strategy of reducing the privileges available to them on one hand and subjecting them to a stricter regulatory regime on the other. However, given the role of genuine NPOs in the welfare of the downtrodden and the broader government policy of supporting such endeavours, this is a somewhat complex issue that may easily evoke strong emotional responses and hence can be implemented only after a larger consensus is reached within society.

5.2.35 At present, no government agency has a complete database of NPOs. The CBDT has the

largest such database. There may be information with other agencies such as the Ministry of Home Affairs and the CEIB. It has been suggested that the CBDT may be assigned the role of a centralized agency with which every NPO would be required to be registered and by which it would be allotted a unique number. This would be in line with the decision taken by the government in light of the possible misuse of the sector for undesirable activities. Suggestions made by the NPO Sector Assessment Committee, an Inter-ministerial body, should be accepted and the office of the Director General of Income Tax (Exemption) appropriately strengthened in terms of manpower, infrastructure, and capacity building.

5.2.36 The regulation and enforcement of KYC norms in the cooperative sector may be strengthened by the state governments as well as the central government. Responsibility may be fixed for any lapse in this regard as well as for any subsequent

failure to alert authorities as regards any suspicious transactions in such accounts.

C. Creation of Effective Credible Deterrence

5.2.37 Since neither the tax rates nor the transaction costs of compliance can be brought down to zero, there will always remain a certain incentive for generation of black money, which can only be tackled by having effective credible deterrence in place. The reason why deterrence is placed third in this list of strategies is not because it is less important than the previous strategies but because it works in tandem with the strategies mentioned earlier. To exemplify, deterrence that is created with huge compliance costs can turn out to be counterproductive since the disincentive against generation of black money will be overshadowed by the disincentive against compliance resulting from high transaction costs. Similarly, if the tax rates remain very high along with restrictions and barriers in economic activities, the level of deterrence that will

be required to offset the consequently high incentives for evasion and non-compliance will be very difficult to achieve. Finally, very high levels of deterrence based on severe penalties or punishments create further distortions of incentives and can result in rent-seeking behaviour requiring additional levels of monitoring, supervision, surveillance, and litigation, all of which add to transaction costs and further increase the incentives for evasion and non-compliance.

5.2.38 It is this complex interplay of factors that the monitoring agencies responsible for creation of effective deterrence are required to address. With a rapidly growing and a globalising economy, and with developments in information technology and networking, the technological challenges are becoming ever more complex. All these challenges need to be tackled by multi-pronged strategies discussed in the following paragraphs.

C.1 Integration of Databases Leading to Actionable Intelligence by Monitoring Agencies

5.2.39 Modern administration and investigation must be focused on collecting all relevant data, its seamless and automated collection from different sources under different laws and regulations, and its integration into a collective national database. It should generate meaningful information that can be processed into actionable intelligence by the respective state agencies for their respective purposes. This will ensure that their actions are focused and well targeted, thereby ensuring that investigations are directed towards potential evaders while those complying with laws and regulations do not have to bear any additional costs of scrutiny or investigations. Though different state agencies are already coordinating their actions to tackle the menace of black money with considerable success, there is need for further integrating the systems and databases of different agencies to avoid the

strategies should strive to further strengthen the ability to flag potential evaders by processing the database.

5.2.41 Similar systems and databases are being maintained by other government agencies as well. For example, banks maintain individual accounts and have information about each and every banking transaction of taxpayers. The Customs and Excise Department has the information related to exports, imports, and manufacturing. The information available with all these Departments and agencies is required to be integrated on real-time basis subject to confidentiality provisions of various Acts. This is a real challenge considering the huge taxpayer base of India and the huge data available with each and every department/agency. It requires a common taxpayer identifier and real-time connectivity of the systems of different agencies. The integration exercise further requires regular updating of the database and safeguards against the misuse of the data.

5.2.42 This coordination is required at all levels including the generation, layering, and introduction/ accumulation of black money. The integration has to be through legal provisions, systems, organizations as well as at informal level. The Government of India has introduced different legal provisions for improving the coordinated efforts. The introduction of VAT and the proposal to introduce the GST are examples of such measures. It is common knowledge that one of the major sources of generation of black money is the out of books sales. These out of books sales are resorted to by taxpayers to evade different taxes such as excise duty, sales tax, and income tax. With the introduction of VAT, the credit of the duty on the input can be claimed only if VAT has been paid thereon. Thus it discourages out of books sales. In the earlier system, e-tax was required to be paid at the point of first sale in the state and thereafter the goods became tax paid. Thus no sales tax was required to be paid on the resale of goods. Now each vendor has to pay taxes on the addition by him to the

duplication of efforts and formulation of a coherent and effective strategy for combating black money.

5.2.40 Efforts are already being made to integrate the systems and organisations of different agencies. Taxpayers are required to file different kinds of returns and reports based on their tax liability such as returns of income and wealth tax, tax deducted at source (TDS), international remittances, and of international transactions with associated enterprises, tax audit reports, and reports of international transactions. The information obtained through all these returns and forms is compiled in the database of the Income Tax Department. Information is also collected from different agencies such as banking and financial institutions, registrars of immovable properties, land records office, mutual fund organisations, and credit card agencies as per the provisions of the Income Tax Act. All this information is stored in the database of the Income tax Department. Based on this information, the system selects cases for scrutiny every year. The future

value of the goods. This ensures better reporting and discourages the generation of black money. The introduction of the GST will be a major step in the integration of the efforts of different agencies dealing with black money.

5.2.43 The information and intelligence gathering mechanisms of various economic agencies need to be more broad based so that the entire gamut of economic activity is captured in an electronic manner, mined, and analysed. All the agencies continuously need to get technologically upgraded in this area to effectively tackle the menace of black money. The skills of manpower resources available with the agencies also need to be upgraded continuously and exposed to global best practices in their sphere of work.

C.2 Strategies to Strengthen Direct Tax Administration

5.2.44 As the contribution of direct taxes in revenue collections rises, direct tax administration

must be strengthened to ensure that it keeps pace with the rising needs of the growing economy. This factor is also important because direct tax databases are one of the largest databases available in the country and being an accounts-based tax, it has the potential of creating appropriate audit trails that can build strong deterrence against evasion as well as help catch evaders and trace black money kept in various forms both within the country and abroad. There are several measures that are likely to form an inherent part of this strategy and they are discussed in the following paragraphs.

5.2.45 Direct Tax Administration has a major role to play in the process of unearthing black money. The personnel manning the Department need to be properly equipped for discharging this role. Scrutiny assessment of the returns of income is an important tool for detecting money on which payment of any taxes is being evaded. However, it needs to be complemented by the ability of the Tax Administration to prosecute the evaders by collecting

appropriate evidence against them. In order to achieve this objective, a lot of capacity building will need to be undertaken as the requirements of criminal investigation are quite different from those of civil scrutiny. The Directorate of Criminal Investigation, if provided the right training, infrastructure, powers, and resources, may become a very effective deterrent against tax evasion and black money.

5.2.46 The Large Taxpayer Units (LTU) handles cases of corporates having presence at several locations. This office plays a crucial role in the tax scrutiny of large taxpayers. One crucial aspect of the functioning of the LTU is coordinated functioning of the Income Tax and the Excise Departments. This enables indepth analysis of the finances of big corporates and helps prevent tax evasion. The LTU may become more effective if the audit cycle of the Income Tax, Service Tax and Excise Departments is aligned. Presently these three agencies are under the umbrella of the LTU. However, they scrutinise

and is liable for prosecution. However, despite these provisions being in the statute, the actual state of criminal prosecution in tax matters in India is somewhat dismal. In very few cases, do the tax authorities opt for prosecution and subsequent conviction in tax evasion cases is rare and cannot be found even in high-profile search cases. The absence of a specialized prosecution wing and the cumbersome procedure contribute to this state of affairs.

5.2.54 The government has taken a number of corrective steps in the recent past. A Directorate of Criminal Investigation has been established to perform functions in relation to offences listed under the Income Tax Act and will act as a specialized arm of the government dealing with criminal prosecution in case of tax evasion. The Finance Bill 2012 provides for constitution of special courts for trial of offences under the Income Tax Act. Judges having specialized knowledge in tax matters can be appointed to preside over the special courts for speedy disposal of cases.

Further, it reduces the maximum punishment prescribed under various offences from three years to two years for simplification of the trial. Offences carrying maximum punishment of more than two years are subject to 'warrant case' procedure which is more time consuming compared to offences carrying a punishment of less than two years which are subject to 'summons case' procedure which is much quicker and thus will result in quicker trial. The Finance Bill 2012 also provides for appointment of specialized public prosecutors for representing the case of tax authorities before the courts.

C.4 Enhanced Exchange of Information

5.2.55 With increased globalisation and liberalisation of national economies and removal/relaxation of control of foreign investments/foreign exchange, there has been manifold increase in cross-border transactions giving taxpayers greater opportunities for tax evasion and avoidance compared to taxpayers operating only in

domestic markets. While the taxpayers operate globally, the tax administrators remain confined to their respective jurisdictions. Thus, to effectively tackle the tax evasion/avoidance adopted by taxpayers, it is imperative that tax administrators cooperate with each other. A key element of such international cooperation in tax matters is through the exchange of information mechanism entered into by countries by way of DTAAs and TIEAs as also through Multilateral Instruments for Exchanging Information.

5.2.56 The officers of the Income Tax Department can use the legislative framework to obtain information from foreign jurisdictions by seeking details such as ownership across the layers of corporate chains, formation documents and subsequent updates, details of beneficiaries and other terms in cases of trusts, accounting records and statements, banking information, and tax returns.

5.2.57 Simultaneously, there is need for capacity building among our tax officers for expediently

utilizing information exchange networks. A manual on exchange of information addressing these issues is under preparation. Further, as the exchanges with foreign jurisdictions will increase substantially, a computerized EOI Cell is therefore being created in the FT&TR Division of CBDT, with two Director-level and four Under Secretary-level officers. This EOI Cell, designed on the lines of best practices followed by other countries, is developing a comprehensive database of inbound and outbound exchanges, a high level of security, and the facility of electronic exchange with competent authorities of other countries. The EOI Cell needs to be fully integrated with the Income Tax Department and other investigation agencies. It can also be utilized to obtain administrative assistance in different matters such as exchange of information, assistance in tax collection, tax examination abroad, simultaneous tax examination, and service of documents. The EOI Cell is also planning to integrate itself with the systems of

other countries. This will help reduce the time lag in the exchange of information.

C.5 Income Tax Overseas Units

5.2.58 To facilitate international cooperation in areas of exchange of information, transfer pricing, and taxation of cross-border transactions, ITOUs have been opened with the objectives of monitoring issues related to double taxation avoidance, assistance in handling issues arising out of international taxation and transfer pricing, expediting negotiation of TIEAs with tax havens and non-cooperative jurisdictions, facilitating expedient exchange of information, and facilitating mutual assistance in collection of taxes. These units need to be expediently and optimally utilised for matters related to taxes as well as exchange of information in order to curb black money.

5.2.59 The way forward for the ITOUs is coordination with the competent authority office of the foreign country on real-time basis on mutual

administrative assistance in tax matters including the exchange of information, assistance in tax collection, simultaneous tax examination, tax examination abroad, and service of documents. The ITOUs will also assist the competent authority with resolving cases under Mutual Agreement Procedures and Advanced Pricing Agreements.

C.6 Efforts to be undertaken at International Forums

5.2.60 India needs to continue raising issues for enhanced transparency and co-operation amongst jurisdictions. Some of these issues include automatic exchange of information, sharing of past information, country-wise reporting, registers of beneficial ownership, and need for toolbox of countermeasures.

C.7 International Taxation and Transfer Pricing

5.2.61 International taxation and transfer pricing are new focus areas both to check the menace of black money and for augmentation of tax collection. By shedding some light upon the dark side of

international taxation and transfer pricing in the previous chapter, we have stimulated a closer and more critical consideration of the ramifications of transfer pricing and international taxation practices and thereby highlighted the need to make their administration more effective. The Government has already introduced the Advance Pricing Agreement (APA) in the financial year 2012-13. The APA is an instrument through which the arms' length price of an international transaction will be determined in advance. This will not only ensure avoidance of trade mispricing but will also ensure that there is tax certainty for the MNEs located in India or doing business with India. There is also need to step up research into multi-layered cross-border transactions and ever-changing transfer-pricing manipulations to prevent considerable opportunities for capital flight, tax avoidance, and generation and transfer of black money.

C.8 Effective Curbing of Structuring through Tax Havens

5.2.62 India has consistently taken the stand against structuring of transactions through tax havens by creating a complex chain of subsidiaries for avoidance of taxes. Indian tax administration has always been of the view that foreign investors in India should pay taxes on their income either in India or the country of their residence, and does not endorse attempts to avoid taxes in both the countries by use of such opaque tax-avoidance structures. The legislative measures included in the Finance Bill 2012 and the introduction of GAAR can create necessary deterrence against such structuring and thereby plug this loophole for tax evasion.

C.9 Strengthening of Indirect Tax Administration

5.2.63 Indirect Tax Administration has undergone major reforms during the last two decades. Most of these pertain to rationalisation of custom duties on international trade and they have indirectly contributed to the economic growth in recent times. Another important development in the field of indirect

taxation is the introduction of service tax, which is now contributing significantly to the central government's revenue collections. Liberalization of international trade and dilution of tariff barriers have significantly reduced the incentives for black money generation, but not completely removed them. Future strategies must address this aspect and counter it by strengthening of tax administration and creation of effective deterrence against evasion of indirect taxes.

5.2.64 One of the main thrust in indirect tax administration can be the collection of more data and creation of greater data-processing capacity that can then be integrated with other data and help multiply the system's sensitivity in flagging potential evaders and initiating action against them.

5.2.65 As an example, for curtailing TBML, there should be institutional arrangement for examining cases of mismatch between export and corresponding import data, as done by the Data Analysis and Research for Trade Transparency System (DARTTS)

of US Customs. Indian Customs can consider setting up a Trade Transparency Unit (TTU) along these lines for which appropriate legal framework may be introduced. Existing Customs Cooperation Agreements mostly provide for mutual administrative assistance in individual cases under investigation. These agreements should have institutional arrangement for exchange of Harmonised System of Nomenclature (HSN) chapter-wise data of export and import. Similar arrangements can be made for Preferential Trade Agreements (PTA) and Free Trade Agreements (FTA).

C.10 Strengthening of FIU-IND

5.2.66 Further strengthening of the FIU will remain an important part of the overall strategy for creating stronger deterrence against generation of unaccounted wealth and its use in various legal and illegal activities. The FIU-IND has already initiated project FINnet (financial intelligence network) so as to adopt industry best practices and appropriate

technology to collect, analyse and disseminate valuable financial information for combating money laundering and related crimes. Project FINnet would greatly enhance efficiency and effectiveness in the FIU-IND's core function of collection, analysis, and dissemination of financial information. The contract with the system integrator was signed in February 2010 and the new technical infrastructure is being rolled out. Such efforts will need to be expanded further.

5.2.67 The development and identification of 88 red flag indicators by a Working Group of the representatives of the Indian Banks' Association (IBA), the Bank of India, and FIU-IND has been a major development in the supervision of financial activities. These red flags, which are to be shared with the reporting entities and regulators, are currently in the process of being implemented for generation of alerts.

C.11 Strengthening of CEIB

5.2.68 Upgradation of IT capability and networking for the CEIB to effectively fulfil its primary role of collation, analysis, and dissemination of intelligence and information to the concerned agencies needs to be undertaken. A decision was taken at the meeting of the Economic Intelligence Council chaired by the Hon'ble Finance Minister to set up a multidisciplinary school of economic intelligence for developing capacity building in the area of the economic intelligence. Steps are being taken to set up the school and determine its curriculum.

C.12 Strengthening of Other Institutions

5.2.69 The Directorate of Revenue Intelligence and Enforcement Directorate can be further strengthened to play an important role in the coordinated functioning of various monitoring agencies. Capacity building of the functionaries, use of updated technology, and integrated utilisation of databases may be important steps towards achieving this end.

C.13 Other Steps to Curb Generation of Black Money within India

5.2.70 There is a need to recognise serious and habitual tax evasion as crime and implement a strict regime of fiscal and penal consequences to provide effective deterrence against habitual tax evasion. The prosecution mechanism in the Income Tax Department needs to be strengthened and direct tax laws and procedures streamlined. Review of the system of legal advice in prosecution matters and putting in place effective machinery to implement prosecution provisions, including a witness protection programme, are areas that also need to be looked into. The Income Tax Department has already initiated action in all these directions.

5.2.71 The law and procedures for collecting and reporting of information, including third-party information both from domestic and international sources, and its effective utilization, also need to be revamped. Mechanisms for verification of information

need to be strengthened. Effective data mining of vast information collected needs to be put in place so that any possible case of non-disclosure or tax evasion is red-flagged and reported and immediate action taken to collect the due taxes and prosecute tax offenders in serious and habitual cases.

5.2.72 The joint task force (JTF) approach needs to be adopted for dealing with serious cases of corruption, tax frauds, terror financing, money-laundering, ponzi / MLM schemes, banking / financial frauds, illegal betting / lottery, etc. The JTF in such cases could consist of all the concerned agencies led by the agency connected with the main infraction of the law.

5.2.73 The effort to tackle the menace of generation and control of black money will need adequate resources to be made available to all the relevant agencies. Emerging areas such as international taxation, transfer pricing, criminal investigation, and exchange of information as well as

action thereon, require commensurate resources of manpower, training, technology etc. and necessary budgetary allocation.

D. Supportive Measures

D.1 Creating Public Awareness and Public Support

5.2.74 In a democratic form of government, political will and decisions are often a function of public demand and perception. It is important that citizens are kept in the loop about government strategies, and this paper is one of the steps that the government has specifically adopted in this regard. People must be given to understand how the government views the problem of black money and how it plans to tackle and control it. There is also need to initiate greater public dialogue and debate about the virtues of tax compliance and the menace of black money, while rising above the rhetoric and sincerely attempting to develop a broader understanding of what leads to it and how it can possibly be controlled. It needs to be understood by

one and all that state authorities do not possess magic wands with which they can achieve anything that they desire or are directed to achieve.

D.2 Enhancing the Accountability of Auditors

5.2.75 Unlike many developed countries, Auditors in India have not been requisitely accountable, resulting in frequent undermining of this important aspect. Apart from recent cases of distortionary corporate governance involving highly reputed firms, cases are detected regularly by the regulatory authorities where the Auditors have failed to point out gross violations and even blatant misrepresentations. In the absence of adequate effective provisions, the Auditors are hardly ever held accountable for these lapses. Another aspect of this problem is the way in which a firm opts for an Auditor in this environment of low accountability and prevalent evasion, since a strict Auditor ready to blow the whistle can hardly expect to thrive amidst competitors, many of whom may be more than willing to cooperate and

compromise at different levels. As a result, a very important regulatory tool is virtually losing its role in contributing towards greater compliance. There will be need in future to look into various aspects of the functioning and regulation of the role of Auditors and various other professionals verifying the declarations and statements made by firms and ensure that there are adequate safeguards and sufficient accountability of such professionals.

D.3 Protection to Whistleblowers and Witnesses

5.2.76 In India, the law has not been able to provide adequate protection to informants / whistleblowers, nor do government departments have effective witness-protection programmes. As a result, credible information is not forthcoming and witnesses either do not turn up or turn hostile resulting in acquittals in prosecution cases. The DCI in the CBDT has been empowered to run such a programme. Accordingly, a witness-protection law can be considered as an option. Subsequently, witness-

protection programmes may need to be implemented by all law enforcement agencies.

D.4 Need to Join International Efforts and Use International Platforms

5.2.77 In a globalized world, where all stakeholders are interdependent, no country can take unilateral measures without adversely impacting its own interests. Thus, in such a scenario, there is greater need to integrate with international efforts and use the international platforms for achieving domestic strategies aimed at curbing black money generation within the country.

5.2.78 India, in earlier summits of the G20, has raised concerns over tax evasion and the difficulties in obtaining necessary information pertaining to past years in cases of tax evasion. Some countries/jurisdictions, unlike most of developed and developing countries, differentiate between 'tax fraud' and 'tax evasion'. For them, while tax fraud is a crime, tax evasion is not. These countries refuse to

grant international cooperation and exchange of information regarding tax evasion. This difference in perception assists deliberate concealment of wealth for the purpose of evading tax, something regarded as a crime all over the developed world, and impedes effective exchange of information. There is need to remove this distinction in order to help efforts of government authorities in pursuing tax cheats who have parked funds outside their countries.

5.2.79 India has also been actively advocating making the automatic exchange of information a standard in various International forums including the G20 . At present there is no obligation for countries to exchange information automatically. However, it is necessary to promote automatic exchange of information since this is the best form of exchange of tax information which can promote voluntary compliance and decrease tax evasion. India has requested the G20 countries that they should start exchanging information automatically amongst

themselves and then they can give a call and encourage other counties to do so.

5.2.80 Accounting standards can significantly contribute towards greater transparency and help in strengthening deterrence against generation of black money. This is why G20 countries should continue to insist on a 'single set of high quality, global accounting standards' as advocated by it during the Busan Declaration of G20 Finance Ministers. The G20 countries should specifically endorse the idea and implementation of a country-by-country financial reporting standard, which would include the obligation for each multinational company to report in every country in which it operates its relevant particulars including the details of its financial performance, sales, purchases, labour costs, financing costs including facilitation payments, pre-tax profit, tax charges, and book value.

D.5 Need to Fine-tune Relevant Laws and Regulations

5.2.81 There is also need to strengthen the legal framework for regulation. With a changing environment in which those laws are to be implemented, there is urgent need to modify our laws and practices too to make them effective in the prevailing environment. While such efforts are under way in the area of central taxation laws, there are many other laws, related directly or indirectly to the generation of black money that may have to be modified and made more effective. Some of them may be in the nature of paradigm shifts, like the Right to Information Act which has been a major initiative in empowering the citizen and inculcating transparency in the system. Other legislative measures can be aimed at strengthening the deterrence against perpetrators of financial crimes. An example is the recent amendment in the Income Tax Act, whereby the period of limitation for reopening income tax assessments is proposed to be enhanced from the present six years to sixteen years for bringing to tax undisclosed assets held abroad.

5.2.82 Black money cannot be effectively fought unless the judicial machinery to deal with it is specialized and the trial of offences is expeditious and punishments exemplary. Legal support to various law enforcement agencies should be enhanced. All financial offences should be tried through fast-track special courts. The Ministry of Law may have to take up this issue on priority and make arrangements for setting up fast-track courts all over the country in a time-bound manner. Judicial officers may be provided inputs as required in technical aspects of economic offences.

5.2.83 A professional National Tax Tribunal could be formed to deal with all tax litigation. It has also been suggested that for criminal trial of economic offences, the High Courts may consider setting up exclusive economic offences courts with special summary procedure. Under economic laws, different punishments are prescribed for different offences. Minimum punishments should also be prescribed for economic offences for greater deterrence. Enhanced

punishment, at par with other serious economic offences, is likely to provide more effective deterrence against corruption.

D.6 Strengthening of Social Values

5.2.84 The fight against the menace of black money needs to be fought simultaneously at ethical, socioeconomic, and administrative levels. At ethical level, we have to reinforce value / moral education in the school curriculum and build good citizens, particularly highlighting the ills of tax evasion and black money. At socio-economic level, the thrust of public policy should be to discourage conspicuous and wasteful consumption / expenditure, encourage savings, frugality and simplicity, and reduce the gap between the rich and the poor.

5.3 Strategies for Curbing Generation of Black Money through Illegal or Criminal Activities

5.3.1 Illegal and criminal activities are an equally significant source of black money generation and

curbing them is as an equally important priority of the government. Since many of these activities fall within the ambit of law and order issues, they lie primarily in the domain of state governments. Without undermining the role of the central government, it can be said that strategies for curbing these illegal activities require active participation of state governments, making it even more important that a broader national consensus is achieved in these areas and all political stakeholders commit themselves to pursuing these strategies.

A. Organised Crime

5.3.2 Organised crime, wherever and whenever it exists, lead to profiteering and accumulation of wealth that cannot be reported, thereby generating black money. Such black money is either laundered and brought back into the accountable economy or is taken out of the country or remains within the country, where it may get invested in benami properties, both tangible and intangible in nature.

Organised crime can exist in many areas and can often get mixed up with unreported legitimate activities in vulnerable sectors. For example, a property dealer resorting to forceful illegal eviction of tenants can be indulging in both legitimate and illegitimate activities to generate black money. Strict action by state governments is necessary to curb these crimes.

B. Corruption

5.3.3 Today corruption is perceived as one of the major challenges faced by the country, and this government is fully committed to countering it. While a detailed discussion touching on all the factors that lead to corruption and the wider reforms of policies and their execution may be outside the scope of this paper, it can be stated that curbing corruption also requires multi-pronged strategies consisting of both broader reforms as well as more focused capacity building of institutions that are assigned the responsibility of preventing it.

5.3.4 The government has introduced the Public Procurement Bill 2012. This Bill intends to regulate public procurement by all ministries and central government departments. It aims at ensuring transparency, fair and equitable treatment of bidders, promoting competition, and enhancing efficiency and economy in the public procurement process.

5.3.5 Social-sector schemes involving huge public expenditure under various programmes reportedly suffer from manipulations and leakages. Direct transfers to the accounts of beneficiaries can provide a solution, as they would prevent manipulations like bogus muster rolls. While efforts such as the UID and direct transfer of subsidies will stop leakages in some sectors, in other sectors the problem will have to be addressed differently.

5.3.6 Institutions of the Lok Pal and Lokayukta need to be put in place at the earliest, in the centre and states respectively, to expedite investigations into cases of corruption and bring the guilty to

justice. The legislative step in respect of the Lok Pal has already been taken and the bill is under the consideration of the Parliament. In addition, other bills in this context that are pending with the Parliament for enactment are Public Interest Disclosure and Protection to Persons Making the Disclosure Bill 2010 (Whistleblowers' Bill), Judicial Standards and Accountability Bill 2010 and Citizens' Grievance Redressal Bill 2010.

C Other Criminal Activities that lead to Significant Black Money

5.3.7 There are many illegal activities and crimes that lead to significant income that cannot be reported due to the illegal nature of the activities generating it. These include counterfeit currency, drug trade, and terrorism. Each one of them can be a major source of black money generation and controlling them is one of the great challenges before society. It requires all agencies of both the central

and the state governments to actively draw out long-term strategies to bring them to a halt.

5.4 Strategies for Repatriation of Black Money Stashed Abroad and Issues Related to Confidentiality of Information

A. Repatriation of Black Money Stashed Abroad

5.4.1 The Government of India has repeatedly expressed its commitment to bringing back black money stashed abroad by Indian citizens. However, it is a goal that cannot be achieved unilaterally by government action. It requires coordination and cooperation of the other country. To achieve this end, the government has been rigorously working to evolve an environment and create legal mechanisms for such cooperation through global consensus and specific bilateral treaties. The network of DTAAs and TIEAs, which has been highlighted in Chapter 4, is a major step in this direction. However, these DTAAs/TIEAs do not have provisions for repatriation of undisclosed assets. There are limited provisions in

some of the existing laws. However, there is no international consensus to have mechanism for repatriation of undisclosed assets located abroad. Without international consensus on this issue it is difficult to implement domestic law on repatriation of assets located abroad. The only exception is the provision under the United Nations Convention against Corruption (UNCAC) where, if it is established that the undisclosed asset represents corruption money, it can be seized and repatriated. India has ratified the UNCAC on 9 May 2012 and thus in cases of corruption, it will be an effective tool for repatriation of assets located abroad.

5.4.2 The Restitution of Illegal Assets Act 2011, passed by Swiss Parliament in October 2010, provides for freezing, forfeiture and restitution of politically exposed persons, or their associates, where a request made under MLAT cannot produce a result due to failure of state structures in the requesting state. The failure of state structure would be in cases where the requesting state cannot satisfy the

requirements of MLATs owing to the total or substantial collapse, or the unavailability of its national judicial system. Since India has a well-functioning judicial system as also a well-functioning MLAT with Switzerland, we do not need to take recourse to this Act.

5.4.3 Under the Income Tax Act, tax, penal interest, and penalty (from 100 per cent to 300 per cent of the tax evaded) is levied whenever there is information about undisclosed assets located abroad. In most cases this is equivalent to or more than 100 per cent of value of the undisclosed asset. The tax liability (including penalty) can then be recovered from Indian assets. If the tax liability cannot be recovered from Indian assets, assistance of the other country (where the undisclosed asset is located), can be taken if in the DTAA there is a provision for assistance in tax collection. This provision exists in 30 of India's 82 DTAAs (Norway, Botswana, Romania, Denmark, Poland, Turkmenistan, Kazakhstan, Sweden, South Africa, Belarus, Trinidad and Tobago,

Jordan, Czech Republic, Morocco, Portuguese Republic, Belgium, Kyrgyz Republic, Bangladesh, Ukraine, Uganda, Sudan, Armenia, Iceland, Tajikistan, Luxembourg, Qatar, Mexico, Uruguay, Mozambique, and Georgia). Steps are being taken to include this provision in other DTAAs as well.

5.4.4 India has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 2 February 2012 and it will be in force from 1 June 2012. This Convention provides for assistance in tax collection from countries that are parties to the Convention (provided they have not placed any reservation on this type of assistance) and thus India will become better equipped to repatriate the money from these countries to the extent of tax liability.

5.4.5 Stolen Assets Recovery (StAR) is a partnership between the World Bank Group and UNODC (United Nations Office on Drugs and Crime) that supports international efforts to end safe havens

for corrupt funds. Towards this end, it brings together governments' regulatory authorities, financial institutions, and civil society for collective responsibility and action for the deterrence, detection, and recovery of stolen assets. India has taken steps to associate itself with the StAR initiative.

5.4.6 Within this legal framework, the Indian government has been taking steps to recover illegal money that has been stashed abroad. The Government will need to expand the legal framework of DTAAs and TIEAs as in last few years it has been a very useful source of information. Government will also need to sustain its efforts to obtain such information and take strict follow-up action against tax evaders. Building global consensus on assistance on repatriation of money in tax-evasion cases would facilitate the process.

B. Voluntary Disclosure Schemes and Tax Recovery

5.4.7 One of the options suggested for bringing back black money stashed overseas is scheme for

voluntary disclosure of such deposits. This option has been successfully adopted by some countries (USA, UK, France, Germany, etc.). In these schemes, only partial benefits in the form of immunity from prosecution were made available in lieu of voluntary disclosure, as taxes along with lumpsum interest and penalty has to be paid. In the past, India has also opted for voluntary disclosure schemes. A similar scheme, targeted at black money stashed abroad can be a one time option, in view of the increasing capacity of tax administration to access information from foreign jurisdiction. However, these schemes have also been criticized for creating future expectations of similar schemes and resultant moral hazard. In recent years, the general public sentiment is also perceived to be against giving any immunity to tax evaders who have parked their money outside India. While such schemes help in recovering some of the lost tax revenue, their overall feasibility needs to be assessed in this background.

5.4.8 A gold deposit scheme has also been suggested from some quarters in this regard which essentially provides that if the depositors part with gold now, they will get it back as gold. This may also carry a nominal rate of return and should be transferable so as to be used as collateral for sale. The most important part of the scheme is that there should be complete tax immunity if the holders come forward to make the deposit and the depositors ought not to be asked where they get the gold from. However, the issue of complete tax immunity needs to be examined in light of other policy objectives.

C. Agreement between Countries for Revenue Sharing

5.4.9 There is administrative agreement between the UK and Switzerland which allows Switzerland to share taxes with the UK on accounts of UK citizens in Swiss Bank. In this regard it may be noted that on 24 August 2011 UK and Switzerland have initialled a tax agreement in respect of capital income derived by UK

residents from assets in Switzerland. The agreement facilitates the levying of tax by the UK on such income in two ways:

(i) A retrospective charge in respect of accounts that were operative as at 31 December 2010 and on 31 May 2013; and

(ii) A tax charge on any future income.

In terms of the retrospective tax charge, the UK resident will be charged tax either as a one-off lump-sum payment (tax rate between 19 and 34 per cent of the value of assets) without disclosure of name; or s/he can allow disclosure of her/his account and then be taxed in accordance with the law. The tax charge on future income will be subjected to a final withholding tax of 27 per cent (for capital gains) and 48 per cent (for investment income). This is basically a revenue-sharing agreement. The agreement is expected to enter into force at the end of 2013. Similar revenue-sharing agreements have also been

made between Germany and Switzerland and Austria and Switzerland.

5.4.10 India has already taken up this issue with Switzerland. However, it needs to assess the costs and likely benefits of the step before taking any policy decision. It may be seen that the agreement between the UK and Switzerland is more of a revenue-sharing model which allows revenue sharing at the cost of disclosing identity. The disclosure of name is allowed only when the UK resident, holding assets in Switzerland, volunteers to disclose her/his name or when UK tax authorities make a request after establishing foreseeable relevance criteria.

5.4.11 Thus, India will have to take a decision first as to whether such type of agreement will meet its national objective where it can get an opportunity to share taxes with the Swiss government on assets held by Indian residents in Switzerland without learning the identity of the defaulting Indian residents. The Government of India looks forward to

discussion on this important issue within and outside parliament before taking any further steps.

D. Confidentiality of Information under DTAAs/TIEAs

5.4.12 The Government is bound by the treaty provisions under which information is received. As per the international standard, tax information exchanged under DTAAs/TIEAs is protected by the confidentiality clause of the respective DTAA/TIEA under which information is received. The confidentiality provisions of these DTAAs/TIEAs generally allow disclosure or use of information only for tax purposes. India has been trying to renegotiate its DTAAs or conclude new DTAAs/TIEAs by excluding the confidentiality clause but has not met with much success. While some countries have agreed to include a provision that allows sharing of information with other law enforcement agencies subject to fulfilment of certain conditions they have generally refused to accept India's request to completely eliminate the

confidentiality provisions, as they strongly feel that the information should not be made public until the tax case comes up before a court. These countries insist on such confidentiality in order to protect human rights which are also recognised in India. For example, if we receive information about 100 Indians having bank accounts abroad from a country, it does not prove automatically that all these 100 accounts represent black money of Indian citizens stashed aboard. There may be cases where the account holder may be an NRI who is not assessed to tax in India with respect to those sums or the sum deposited may already have been disclosed to the Income Tax Department. It is only after enquiry and completion of assessment that one can say for sure whether the amount deposited in the foreign bank account represents black money of an Indian citizen stashed abroad.

5.4.13 In order to ensure that there is no delay in these names becoming public after completion of assessment, the government has taken a view that in

cases where any undisclosed overseas asset is detected (including undisclosed foreign bank accounts) one need not wait for disposal of first appeal or imposition of penalty in order to launch prosecution. Accordingly, prosecution was launched in 17 cases immediately after completion of assessments based on information received from German authorities about Indians having bank account in LGT banks and these 17 names have become public on initiating prosecution. Similar procedure can be followed in other cases where undisclosed overseas assets have been detected.

5.4.14 Further India is also under international obligation to maintain the confidentiality of the information received under DTAAs/TIEAs. In this context it is subject to the peer review process of all the countries being undertaken by the Global Forum on Transparency and Exchange of Information for Tax Purposes. India is a vice chair of the Peer Review Group of the Global Forum. The Peer Review Group is assessing all the countries against a set of

references. One of the terms of reference (C.3) clearly mandates confidentiality of information as well as correspondences between competent authorities. Any breach of the confidentiality clause will not only affect India's rating in its peer review but also its international image and give a signal that India is not committed to its international obligations. This may seriously put at risk India's efforts to get similar information from other countries in the future. Thus public disclosure of information received from Germany, France, or other countries need to be used in a way that is in accordance with India's international obligations and do not jeopardise any future efforts in this regard.

5.4.15 There is another related question, namely how the treaty with France is relevant for not disclosing the names of Indians having accounts in Swiss banks. Under the DTAA countries are obliged to exchange information available within their country if it leads to detection of tax evasion and it does not matter from which country the information has been

sourced. Hence France is under obligation to exchange information with India under the India-France DTAA if it is holding information about Indian citizens' bank accounts which is likely to lead to detection of tax evasion even if the bank accounts are located in a third country. Further, it is also an international standard that the supplying state should exchange information even if it does not have domestic interest in it.

5.5 This document makes a serious attempt at putting together a framework for addressing the issue of black money, its generation and strategies for recovering illicit wealth. It is expected that this document would provide a basis for a more informed public debate on the subject. The complexity of the factors that underline the problem necessitates a broad based consensus across the political and institutional divide as well as between governments at different levels. The success in forging a consensus on the policy modalities to regulate and eventually eradicating this scourge will go a long way in making

the country more equitable and efficient for facilitating human enterprise.

Annexure

Annexure1: Offences as Listed in the Schedule of the PMLA

	Designated Category of Offence	Name of Act in the Schedule of the PMLA
1.	Participation in an organized criminal group and racketeering	Indian Penal Code, 1986 (s.120B-criminal Conspiracy) Part B of the Schedule
2	Terrorism, including terrorist financing	The Unlawful Activities (Prevention) Act, 1967 (ss. Read with section 3; 11 read with ss.3 and 7; 13 read with s.3. 16 read with s.15, 16A,17,18,18A,18B,19,20,21,38,39 and 40) – Part A of the Schedule

3	Trafficking in humanbeings and migrant smuggling	The Bonded Labour System (Abolition) Act. 1976 (ss. 16, 18 and 20) - Part B of the ScheduleThe Transplantation of Human Organs Act. 1994 (ss.'18, 1S and 20) – Part B of the ScheduleThe Child Labour (Prohibition and Regulation) Act, 19BO (s 14) - Part B of the ScheduleThe Juvenile Justice (Care and Protection of Children) Act, 2000 (ss. 23 to 26) - Part B of the ScheduleThe Emigration Act, 1 983 (s.24) - Part B of the ScheduleThe Passport Act, 1967 (s.12) - Part B of the ScheduleThe Foreigners Act, 1946 (ss. 14, 14B and 14C) - Part B of the Schedule
4	Sexual exploitation,	The Immoral Traffic (Prevention) Act, 1956 (ss.5,6, 8 and 9) – Part

	including sexual exploitation of children	B of the Schedule
5	IIIicit trafficking in narcotic drugs and psychotropic substances	The Narcotic Drugs and Psychotropic Substances Act, 1985 (ss.15 to24,25A,27A and 29) - Part A of the Schedule
6	Illicit arms trafficking	The Arms Act. 1959(ss. 25 to 30) - Part B of the Schedule
7	Illicit trafficking in stolen and other goods	The Indian Penal Code, 1860 (ss. 411 to 414) – Part B of the Schedule
8	Corruption and bribery	The Prevention of Corruption Act, 1988 (ss. 7 to 10 and 13) Part B of the Schedule
9	Fraud	The Indian Penal Code, 1860, (ss.417 to 424) Part B of the

		Schedule.
10	Counterfeiting currency	The Indian Penal Code. 1860 (ss. 489A and 489B) - part A of the Schedule
11	Counterfeiting and piracy of products	The Copyright Act, 1957 (ss. 7 to 10 and 13)-part B of the Schedule. The Trade Marks Act, 1999 (ss. 103, 104, 105, 107 and 120)–Part B of the ScheduleThe Information Technology Act. 2000 (ss.72 and 75)- Part B of theScheduleThe Biological Diversity Act, 2002 (s. 55 read with s.6) - Part B of theScheduleThe Protection of PlantVarieties and Farmers Rights Act, 2001 (ss. 70 to 73 read with s.68) - Part B of the ScheduleThe Indian Penal Code. 1860 (s. 255. 257 to 260,475,476, 486 to 488) - Part B of the Schedule

12	Environmental crime	The Environment Protection Act 1986 (ss. 5 read with section 7 and 8) - Part B of the ScheduleThe Water (Prevention and Control of Pollution) Act, 1974 (ss. 41(2) and 43) - Part B of the Schedule The Air (Prevention and Control of Pollution) Act, 1981 (s. 37) - part B of the ScheduleThe Wild Life (Protection) Act. 1972 (s. 51 read with ss. 9, 17A,39. 44, 48 and 49B) – Part B of the Schedule
13	Murder, grievous bodily Injury	The Indian Penal Code, 1860 (s. 302, 304,307, 308, 327, 329) – Part B of the Schedule
14	Kidnapping, illegal restraintand hostage-taking	The Indian Penal Code, 1860 (s. 364A) – part B of the schedule
15	Robbery or	The Indian PenalCode. 1860 (ss.

	theft	392 to 402) - Part B of the schedule
16	Smuggling	The customs Act. 1962 (s. 135)- part B of the Schedule
17	Extortion	The Indian Penal Code. 1860 (ss. 384 to 389) - Part B of the Schedule
18	Forgery	The Indian Penal Code, 1860 (ss.467, 471 to 473) – Part B of the Schedule
19	Piracy	The Suppression of UnlawfulActs against Safety of Maritime Navigation and fixed Platforms on Continental Shelf Act, 2002, (s.3) – part B of the Scheduleand Fixed Platforms on Continental Shelf Act, 2002 (s. 3)- part B of the Schedule
20	Insider trading and market	The Securities and Exchange Board of India Act, 1992 (s. 12A read with S.24)-Part B of the

	manipulation	Schedule

Annexure 2: Text of G20 Communiques

1. Communiqué at the Meeting of G20 Finance Ministers and Central Bank Governors, Paris, 18-19 February 2011

"We urge all jurisdictions to extend further their networks of Tax Information Exchange Agreements and encourage jurisdictions to consider signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters."

2. Communiqué at the Meeting of G20 Finance Ministers and Central bank Governors, Washington DC, 14-15 April 2011

"We agreed to maintain momentum for action to tackle non-cooperative jurisdictions and to fully implement the G20 anti-corruption action plan. We asked the Global Forum to

report to us on ways to improve the effectiveness of exchange of tax information."

3. Communiqué at the Meeting of G20 Finance Ministers and Central Bank Governors Paris, France, 14-15 October 2011

"We reaffirmed our objective to achieve a single set of high quality global accounting standards. We look forward to discussion of progress made in tackling non-cooperative jurisdictions and tax havens in Cannes. We underlined in particular the importance of comprehensive tax information exchange and encourage competent authorities to continue their work in the Global Forum to assess and better define the means to improve it."

4. The Leaders' Declaration at G20 Seoul Summit November 2010:

"We reiterated our commitment to preventing non-cooperative jurisdictions from

posing risks to the global financial system and welcomed the ongoing efforts by the FSB, Global Forum on Tax Transparency and Exchange of Information (Global Forum), and the Financial Action Task Force (FATF), based on comprehensive, consistent and transparent assessment. We reached agreement on:

The FSB to determine by spring 2011 those jurisdictions that are not cooperating fully with the evaluation process or that show insufficient progress to address weak compliance with internationally cagreed information exchange and cooperation standards, based on the recommended actions by the agreed timetable.

The Global Forum to swiftly progress its Phase 1 and 2 reviews to achieve the objective agreed by Leaders in Toronto and report progress by November 2011. Reviewed jurisdictions identified as not having the elements in place to achieve an effective

exchange of information should promptly address the weaknesses. We urge all jurisdictions to stand ready to conclude Tax Information Exchange Agreements where requested by a relevant partner."

5 The Leaders' Declaration at G20 Cannes Summit November 2011:

"We are committed to protect our public finances and the global financial system from the risks posed by tax havens and non cooperative jurisdictions. The damage caused is particularly important for the least developed countries. Today we reviewed progress made in the three following areas:

-In the tax area, the Global Forum has now 105 members. More than 700 information exchange agreements have been signed and the Global Forum is leading an extensive peer review process of the legal framework (phase 1) and implementation of standards (phase 2). We ask

the Global Forum to complete the first round of phase 1 reviews and substantially advance the phase 2 reviews by the end of next year. We will review progress at our next Summit. Many of the 59 jurisdictions which have been reviewed by the Global Forum are fully or largely compliant or are making progress through the implementation of the 379 relevant recommendations. We urge all the jurisdictions to take the necessary action to tackle the deficiencies identified in the course of their reviews, in particular the 11 jurisdictions whose framework does not allow them at this stage to qualify to phase 2. We underline in particular the importance of comprehensive tax information exchange and encourage competent authorities to continue their work in the Global Forum to assess and better define the means to improve it. We welcome the commitment made by all of us to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and

strongly encourage other jurisdictions to join this Convention. In this context, we will consider exchanging information automatically on a voluntary basis as appropriate and as provided for in the convention;

- In the prudential area, the FSB has led a process and published a statement to evaluate adherence to internationally agreed information exchange and cooperation standards. Out of 61 jurisdictions selected for their importance on several economic and financial indicators, we note with satisfaction that 41 jurisdictions have already demonstrated sufficiently strong adherence to these standards and that 18 others are committing to join them. We urge the identified non-cooperative jurisdictions to take the actions requested by the FSB;

- In the anti-money laundering and combating the financing of terrorism area, the FATF has recently published an updated list of

jurisdictions with strategic deficiencies. We urge all jurisdictions and in particular those identified as not complying or making sufficient progress to strengthen their AML/CFT systems in cooperation with the FATF.

We urge all jurisdictions to adhere to the international standards in the tax, prudential and AML/ CFT areas. We stand ready, if needed, to use our existing countermeasures to deal with jurisdictions which fail to meet these standards. The FATF, the Global Forum and other international organizations should work closely together to enhance transparency and facilitate cooperation between tax and law enforcement agencies in the implementation of these standards. We also call on FATF and OECD to do further work to prevent misuse of corporate vehicles."

Annexure 3: Recommendations of the Committee Headed by Chairman, CBDT on Black Money

A Committee headed by the Chairman of CBDT was constituted on 27th May, 2011 for examining ways to strengthen laws to curb the generation of black money in the country, its legal transfer abroad and its recovery. The Committee has submitted its report to the Ministry of Finance on 29th March, 2012 and its recommendations are summarized below:

A. Preventing generation of black money

6.1 India must ensure transparent, time-bound & better regulated approvals / permits, single window delivery of services to the extent possible and speedier judicial processes. The Electronic Delivery of Services Bill, 2011 that seeks to provide for electronic delivery of public services by the government to all persons to ensure transparency, efficiency, accountability, accessibility and reliability in delivery

of such services has been tabled before the Parliament in December, 2011.

6.2 The fight against the monstrosity of black money has to be at ethical, socio-economic and administrative levels. At the ethical level, we have to reinforce value / moral education in the school curriculum and build good character citizens, particularly highlighting the ills of tax evasion and black money. At the socio-economic level, the thrust of public policy should be to discourage conspicuous & wasteful consumption / expenditure, encourage savings, frugality and simplicity, and reduce the gap between the rich and the poor.

6.3 The Government is also considering legislating public procurement law. The Public Procurement Bill, 2012 intends to regulate public procurement by all ministries and central government departments. It aims at ensuring transparency, fair and equitable treatment of bidders, and promote competition and

enhance efficiency and economy in the public procurement process.

6.4 In order to ensure transparent and efficient allocation of natural and man-made resources, oversight in the form of comprehensive regulations, and ombudsman for grievance redressal, particularly for scarce resources - as in land, minerals, forests, telecom, etc. - needs to be introduced and implemented expeditiously.

6.5 Social sector schemes involving huge public expenditure under various programmes reportedly suffer from possible manipulations and leakages. Direct transfers to the accounts of beneficiaries can provide a solution, as it would prevent manipulations like bogus muster rolls, etc. While efforts such as UID and direct transfer of subsidies will stop leakages in some sectors, in other sectors the problem will have to be addressed differently. We, accordingly, recommend that social audit be made mandatory for all social sector schemes that do not involve direct

transfer of credit to the bank account of the beneficiary, at the district / field level, and a second and subsequent AG audit at the HQ level. We also recommend that a system of random inspections by teams of sponsoring Ministry / Department / Agency may monitor utilization of public funds for social sector schemes.

6.6 There should be a dedicated training center for all law enforcement agencies dealing with financial crimes and offences, as this requires special skills. A delegation from the CBDT had recently visited USA and studied the training methodology of the Federal Law Enforcement Training Center (FLETC), Brunswick GA. A multi-disciplinary institution for training in investigation of financial crimes may be established on the lines of FLETC of USA.

6.7 Oversight in the private sector is almost absent, except for some professionally managed companies. It mainly consists of self-regulation, and audit under the Company and Income Tax laws. That the system

of professional audit may be quite ineffective even in professionally managed enterprises is aptly demonstrated by the Satyam case. We are of the view that the burden of dual audit should be reduced to single audit (for both company and tax law) and the audit system be detached from the management and control of the business. We, therefore, recommend that the central government establish a regulator (under Company law / Income Tax law) to empanel auditors in different grades and randomly assign them to the private sector firms, based on category and payment capacity, with mandatory rotation and maximum tenure of two years.

6.8 The proposed national level GST regime should be expeditiously implemented, as the spin-off from its implementation would provide adequate resources to more than compensate the loss apprehended by certain state governments.

6.9 At present, no government agency has complete database of NPOs. CBDT has the largest database

about this sector. There may be information with other agencies such as MHA, CEIB, etc. It is desirable that CBDT be assigned the role of a centralized agency with which every NPO would require to be registered and would be allotted a unique number. This would be in line with the decision taken by the Government in the light of possible misuse of the sector in undesirable activities. There are suggestions made by the NPO Sector Assessment Committee, an Inter-ministerial body, which should be accepted and the office of DGIT (Exemption) appropriately strengthened in terms of manpower, infrastructure and capacity building.

6.10 There should also be sharing of real-time data under Foreign Contribution Regulation Act (FCRA) and DGIT (Exemption) and coordination amongst various enforcement agencies. The registration under section 12AA and approvals under sections 10(23C) / 10(21) / 35 / 80G of the Income Tax Act for charitable organizations are required to be in accordance with international best practices. For this purpose, the

Income Tax Department should devise a mechanism to facilitate effective monitoring and better control over the tax administration of NPOs through modification in existing procedure of granting registrations or according approvals by allotting a PAN-linked system-generated specific number, making mandatory the quoting of this number in the tax returns and devising suitable changes in the existing tax return forms. This would filter out bogus claims and would also help in maintaining authentic data base of NPOs.

6.11 Accountability of both public and private offices needs to be enhanced. As we are mainly concerned here with public sector accountability, we recommend that apart from good practices being followed such as Fiscal Responsibility and Budget Management (FR M) Act and outcome budget, performance-linked appraisal system of rewards and punishments, already under consideration, should be expeditiously implemented.

6.12 In the recent investigations by Income Tax department on the mining industry in Karnataka, it has come to light that state law allows unregistered dealers (URD) to trade in minerals, possibly as a measure to raise revenue. This is contrary to the central Mines and Minerals (Regulation and Development) Act, 1957 and encourages illegal mining and unregulated trade in minerals. This situation requires immediate remedy and all laws relating to licensing and regulation in mining need a thorough review. It also came to light that there was mismatch between exports and inward remittance, as also between information available with different authorities. The anomaly between the central and the state laws with regard to URDs should be immediately removed.

B. Discouraging use of black money

6.13 Government may consider amending existing laws (The Coinage Act 2011, The Reserve Bank of India Act 1934, FEMA, IPC, Cr PC, etc.), or enacting a

new law, for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use, and including provisions for confiscation of cash held beyond prescribed limits. This would address the concerns expressed by various courts, and also the Election Commission of India for reducing the influence of money power during elections.

6.14 To reduce the element of black money in transactions relating to immovable properties, provision for NOC should be introduced in the Income Tax law with safeguards to reduce administrative complications and increased ease of compliance, so that an appropriate and uniform data-base is also set up, and a proper national-level regulation is put in place. The new system should be computer driven with minimal interface between the tax authorities and the tax-payer, and enforced by a dedicated unit within the investigative machinery of the Income tax department on the basis of pre-determined parameters and standard operating procedures. The

electronically generated NOC, within a specified period, would also act as a tax clearance certificate.

6.15 The Accounting Standard No.7 should be modified by the ICAI to be made applicable to real estate developers also. AS-7 and AS-9 should be notified under the Income Tax Act, 1961.

6.16 There is no uniformity in the matter of levy of agricultural income tax among states. Agriculture generates around 14 per cent of the country's GDP. Giving credit to agricultural income for income tax purposes without verification of claim allows an avenue for bringing black money into the financial system as agricultural income. State governments may consider levy of agricultural income tax with facility for computerized processing and selective verification. This will on the one hand enhance revenues of state governments, and on the other hand prevent laundering of black money in the garb of agricultural income.

C. Effective detection of black money

6.17 The regulation and enforcement of KYC norms in the co-operative sector may be strengthened by the State Governments as well as the Central Government. Responsibility may be fixed for any lapse in this regard, as well as for any subsequent failure to alert authorities as regards any suspicious transactions in such accounts.

6.18 The RBI could consider stricter implementation of KYC norms and limit number of accounts that can be introduced by a single person, the number of accounts that can be maintained in the same branch by any entity and alerts about same address being used for opening accounts in different names. Stricter adherence to, and enforcement of, KYC norms is needed for ensuring proper compliance by banks and financial institutions. The Government, as well as the RBI, also need to put a better regulatory framework in place and act promptly against errant persons / institutions.

6.19 The Ministry of Corporate Affairs, which already has a centralized data-base of all companies, may examine placing a cap on the number of companies operating from the same premises and number of companies in which a person can become director.

6.20 The government may consider introducing alternative financial instruments to reduce the attraction of gold as savings instrument. It may also consider revising customs duties, as also graded wealth tax, on gold and jewellery to discourage investments in unproductive assets. The taxation structure on bullion and jewellery, including VAT / Sales Tax should be harmonized.

6.21 Better reporting / monitoring systems are to be put in place to trace the dealings in bullion / jewellery through the Income Tax / Customs / Sales Tax Acts. While the Income Tax Department has made it mandatory to obtain PAN or Form-60 / Form-61 for purchase of bullion above Rs. 5 lakh. Similar rules should be framed for purchase / sale of bullion /

jewellery, and collection of tax at source on purchases especially in cash.

6.22 Use of banking channels and credit / debit cards should be encouraged, while trade practices such as cheque discounting should be discouraged. The validity period of cheques / DDs has been reduced from 6 to 3 months w.e.f. 1st April 2012, which will discourage discounting of negotiable instruments. Payments by debit / credit cards through e-service intermediaries will simplify and encourage payments in these modes and reduce the cash economy. It is imperative that payment of wages and salaries in the private sector should also be through banking channels and become cash-less, in line with the government objective of financial inclusion.

6.23 Income Tax Department, which has a large data-base of financial transactions, should immediately set up the Directorate of Risk Management for proper data mining and risk analysis. The third-party reporting mechanism of the Income Tax Department

should be made computer-driven and cover most high-value transactions in the financial sector.

6.24 Foreign remittances using corporate structures and the formal financial sector instruments may be a popular method of transferring funds (even of illegal origin) to foreign jurisdictions or for routing back to India through Foreign Institutional Investment (FII). There is a need to create a robust database of such remittances and carry out an analysis of their backward and forward linkages in order to understand the nature and legitimacy of the transmitted funds. FIU-IND may be empowered by law to receive reports (similar to other reports submitted to FIU-IND) on all international fund-transfers through the Indian financial system. The FIUs of Australia and Canada are already mandated to receive such reports.

6.25 SEBI by a circular issued in January 2011 has introduced changes in the reporting formats that capture details of downstream issuances of PNs

during the month. From March 2012, these detailed reports are to be filed on a monthly basis but have a lag of six months. Though such details would be useful in identifying suspicious transactions, the six month lag in the information available is likely to reduce the strength of corrective action that can be taken by SEBI. These regulations need to be modified to ensure that information on downstream issuances is collected for the most recent month. This would ensure active surveillance and timely intervention as and when required by SEBI. Further, the most critical feature of an effective monitoring mechanism lies in ensuring strict KYC norms. PN subscribers should be subject to KYC norms of either the home country or the host country whichever is stricter. Though such provision implicitly exists in the extant provisions, these need to be built into SEBI regulations explicitly for better compliance.

6.26 The oversight mechanism for the financial markets must have trained manpower with proper domain knowledge of financial investigation. This will

involve placing officials from the financial investigative agencies in the operations / vigilance machinery of the banks and financial institutions to keep proper vigil and ensure that rules and regulations are followed in the banks and other financial institutions.

6.27 Foreign entities - banks, financial institutions, fund transfer entities, etc. - have set up businesses in India. It has been found that Indian tax residents have been having substantial monetary transactions through these entities or with their branches abroad. Some countries have implemented laws to make it obligatory to furnish information of all transactions undertaken abroad. We recommend that India may also insist on entities operating in India to report all global transactions above a threshold limit. For this purpose, appropriate law, rules or contractual / licensing arrangement with these entities may be framed and implemented.

6.28 In India, there is no law to protect informants / whistle-blowers, nor does any department have effective witness protection program. As a result, credible information is not forthcoming and witnesses either do not turn up or turn hostile resulting in acquittals in prosecution cases. Apparently, the National Investigative Agency runs a program, and the recently created Directorate of Criminal Investigation (DCI) in the CBDT has been empowered to run such a program. Accordingly, we recommend that a witness protection law may be enacted expeditiously and witness protection program should be implemented by all law enforcement agencies.

6.29 DRI maintains constant interaction with its Customs Overseas Intelligence Network (COIN) offices to share intelligence and information through Diplomatic channels on the suspected import / export transactions to establish cases of mis-declaration, which are intricately linked with tax evasion and money laundering. The scope and reach of COIN offices should be further expanded and strengthened.

Customs officers should be stationed in major trading partner countries to liaise with customs authorities of those countries and cause verifications of suspicious trade transactions.

6.30 Institutions of the Lok Pal and Lokayukta may be put in place at the earliest, in the centre and states, respectively, to expedite investigations into cases of corruption and bring the guilty to justice.

D. Effective investigation and adjudication

6.31 Government must consider ways to mitigate the manpower shortage issues which are seriously hampering the functioning of various agencies particularly the CBDT and CBEC. Further, both Boards have submitted proposals for restructuring of their respective field formations. These need to be taken up and implemented on a fast track basis to show the Government's resolve to tackle the issue of black money.

6.32 Simultaneously, more administrative and financial autonomy must be expeditiously devolved

on CBDT and CBEC for formulating tax policies in keeping with the overall government views on economic growth and development, for better tax administration and for providing tax-payer services as per best international practices. This has consistently been recommended by many earlier Committees and Commissions on Tax Administration.

6.33 With the emergence of complex legal matrix, infraction of one law invariably leads to infraction of another. Inter-agency coordination is critical in the fight against black money. There is a need to evolve an effective coordination mechanism that identifies the laws violated, the law violators, and a permanent joint mechanism to investigate all such cases. Some developed countries have an approach of joint task force and de-confliction programs to deal with this issue. It is time we study how this approach and program functions, adapt it to Indian conditions and implement it.

6.34 The information and intelligence gathering mechanisms of various economic agencies need to be more broad-based so that the entire gamut of economic activity is captured in an electronic manner, mined and analyzed. All the agencies need to continuously get technologically upgraded in this area to effectively tackle the menace of black money. The skills of manpower resources available with the agencies also need to be upgraded continuously and exposed to the global best practices in their sphere of work.

6.35 Intelligence sharing is one of the most critical areas for effective law enforcement. For this purpose, there should be a platform for more effective sharing of intelligence / information between central and state agencies. Information exchange among various economic law enforcement / intelligence organizations should become technology driven, preferably through a common technology platform. At the same time data-security should be ensured to prevent unauthorized access to information both

technologically and through access control, and periodical security audit.

6.36 For curtailing TBML, there should be institutional arrangement for examining cases of mismatch between export and corresponding import data, as done by the Data Analysis & Research for Trade Transparency System (DARTTS) of US Customs. Indian Customs should set up a Trade Transparency Unit (TTU) on these lines for which appropriate legal framework may be introduced. Existing Customs Cooperation Agreements mostly provide for mutual administrative assistance in individual cases under investigation. These agreements should have institutional arrangement for exchange of Harmonized System of Nomenclature (HSN) chapter-wise data of export and import. Similar arrangements should be made for Preferential Trade Agreements (PTA) and Free Trade Agreements (FTA).

6.37 Effective battle against black money cannot be ensured unless the judicial machinery to deal with it

is specialized and the trial of offences is expeditious and punishments exemplary. The legal support to various law enforcement agencies should be enhanced. All financial offences should be tried through fast track special courts. The Ministry of Law should take up this issue on priority and make arrangements for setting up fast-track courts all over the country in a time-bound manner. Judicial officers may be provided inputs as required in technical aspects of economic offences.

6.38 Diverse activities are covered by 'primary' enactments to regulate sale receipts, actual production, charging amount in excess of statutory amounts, etc. In some cases, investigation by income tax authorities reveals infringement of state laws. In such cases, the courts admit evidence 'accepted' by state authorities. Provision may be considered for enactment in the law of evidence or the income-tax law to the effect that even if evidence is produced under the primary law, where no independent

verification is made, it will not be conclusive proof for tax purposes.

6.39 Small 'entry operators' / 'bill masters' help launder large sums of money at miniscule commissions. The appellate tax bodies tend to tax their income at nominal rates. There is no effective deterrence except for taxing commission on such bogus receipts. Taxing the entry amounts in the hands of beneficiaries usually does not stand judicial scrutiny. The amendments proposed in the Finance Bill 2012 are expected to take care of the issue in the hands of the beneficiaries. Therefore, the offence of providing fake bills and entries should be dealt with firmly.

6.40 As taxation is a highly specialized subject, most reversals in court rulings are to be found in tax jurisprudence. Government may consider creating an all-India judicial service for specialized judiciary in different laws to achieve uniformity of application.

6.41 The National Tax Tribunal is yet to come into existence. Rapidly developing specialized institutions with requisite domain knowledge, to deal with complex problems confronting the country, is a priority. A professional National Tax Tribunal, with representation from the tax administration also, should be immediately formed to deal with all tax litigation.

6.42 Improvements in the matter of reporting, analysis and communication need to be achieved by further upgrading the computerization programme of the judicial system. It will enable the law enforcement agencies in taking well informed decisions.

6.43 We further recommend that for criminal trial of economic offences, the High Courts may consider setting up exclusive economic offences courts with special summary procedure. Judicial officers posted in these courts could take refresher courses in taxation

laws to properly equip them in dealing with complex tax cases.

6.44 Under economic laws, different punishments are prescribed for different offences. Minimum punishments should also be prescribed for economic offences, to have greater deterrence. Different law enforcement agencies may consider lowering the punishment of 3 years to 2 years to facilitate speedier trial through summary procedure. Maximum punishments under the NDPS Act are 10 and 20 years. Under the NDPS Act, a second serious offence is punishable with death. Certainly, corruption cannot be treated as less diabolical than drug-related offences or money-laundering. Therefore, maximum punishment in serious cases of corruption should be enhanced to 10 years. Similarly, the minimum punishment for different offences of corruption should be enhanced from present 6 months, 1 year and 2 years to 1 year, 2 years and 3 years - at par with PMLA or Customs Act. Enhanced punishment, at par with other serious economic offences, is likely to

provide more effective deterrence against corruption as summarized in the following Table:

Existing and proposed minimum and maximum punishments under economic laws

		PRESENT IMPRISONMENT			PROPOSED	
		Maximum	Minimum	Death	Maximum	Minimum
1	Income Tax Act	7	0		7	3 months
2	Wealth Tax Act	7	0		7	3 months
3	Customs Act	7	0		7	3 months
4	Central Excise	7	0		7	3 months

	Act					
5	P C Act	7	0		10	6 months
6	PML Act	10	3		No change	No change
7	NDPS Act	20	0	Yes *	Life Imprisonment	6 months

NOTES:

* For second conviction punishable with 10-20 years imprisonment.

1. Imprisonment is in years, unless otherwise mentioned.

2. There should be no provision of death sentence for economic offences.

E. Other Steps

6.45 Directorate of Currency (DoC) may be strengthened to introduce coins and currencies would be machine readable, to enable routing of cash transactions through banks easy, user-friendly and reduce the menace of FICN. This will go a long way in enabling the banks to not discourage cash deposits, thus reducing cash economy. The DoC needs to be strengthened to achieve these objectives.

6.46 To prevent misuse of 'off-market', and 'Dabba-trading' or trading outside the recognized stock exchanges, amendment to income tax law may be introduced to allow losses in off-market share transactions to be set off only against profits derived from such transactions.

6.47 As housing finance companies and the property buyers are provided fiscal incentives, it also leads to speculation and flipping transactions. To prevent this, Section 54 of the Income Tax Act should be amended to provide for availing this benefit only twice by a taxpayer in his lifetime.

6.48 The period of limitation for reopening income tax assessments should be enhanced from present six years to sixteen years for bringing to tax undisclosed assets held abroad.

6.49 One of the ways to get assets / money held abroad into the national mainstream is through a compliance scheme. The Committee is of the view that if the above recommendations are implemented properly, it would be possible to get information regarding assets held abroad as well as check the generation of black money within the country and its illicit transfer abroad. Already there are provisions in the Income Tax Act to waive prosecution and reduce penalties in genuine cases of inadvertent infraction of tax laws. Such taxpayers can always avail of the benefits under these provisions and declare any undisclosed income / assets in India or abroad.

Year End	Exchange Rate	Liabilities of Swiss Banks towards Indians	Liabilities towards All Countries	Liability towards Indian (Fiduciary Business)	Liability towards All Countries (Fiduciary Business)	Total Liabilities towards Indians	Total Liabilities towards all Countries	Liabilities towards Indian as % of Total Liabilities
2010	47.79	1.66 Billion CHF (Rs. 7,924	1349.24 Billion CHF	0.29 Billion CHF (Rs. 1,372	145.18 Billion CHF	1.95 Billion CHF (Rs. 9,295	1,494.42 Billion CHF	0.1302

		crore)		crore)		crore)		
2009	45.19	1.39 Billion CHF (Rs. 6,286 crore)	1335.98 Billion CHF	0.57 Billion CHF (Rs. 2,594 crore)	179.03 Billion CHF	1.97 Billion CHF (Rs. 8,879 crore)	1,515.01 Billion CHF	0.1297
2008	45.52	1.59 Billion CHF (Rs.	1739.90 Billion CHF	0.82 Billion CHF (Rs.	280.23 Billion CHF	2.40 Billion CHF (Rs. 10,924	2,020.13 Billion CHF	0.1188

		7,214 crore)		3,710 crore)		crore)		
2007	34.79	2.92 Billion CHF (Rs. 10,168 crore)	2,070.44 Billion CHF	1.38 Billion CHF (Rs. 4,811 crore)	364.33 Billion CHF	4.31 Billion CHF (Rs. 14,979 crore)	2,434.77 Billion CHF	0.1769
2006	36.17	4.99 Billion CHF	1,900.27 Billion CHF	1.47 Billion CHF	328.26 Billion CHF	6.46 Billion CHF (Rs.	2,228.53 Billion CHF	0.2900

		(Rs. 18,041 crore)		(Rs. 5,332 crore)		23,373 crore)		

Annex Table- 2: Liabilities of Swiss Banks – All Countries

	December 2010				December 2006			
Country	Liabilities of Swiss Banks	Liability (Fiduciary Business)	Total Liabilities	% age	Liability of Swiss Banks	Liability (Fiduciary Business)	Total Liabilities	& age
	(in Billion CHF	(In Billion CHF	(in Billion CHF)		(in Billion CHF)	(in Billion CHF)	(in Billion CHF)	

India	1.66	0.29	1.95	0.13	4.99	1.47	6.46	0.29
Germany	52.78	2.62	55.40	3.60	148.08	8.01	156.09	7.00
France	37.55	2.87	40.42	2.63	64.71	7.74	72.45	3.25
Luxembourg	37.47	2.47	39.94	2.60	50.25	4.68	54.93	2.46
United Kingdom	324.09	7.54	331.63	21.55	447.70	15.72	463.42	20.79
Russia	10.51	2.84	13.35	0.87	7.53	5.09	12.62	0.57
Other Countries of Europe	88.38	15.58	103.96	6.77	123.04	33.64	156.66	7.03
United								

States of America	240.62	2.99	243.61	15.83	395.59	8.38	403.97	18.13
Australia	24.55	0.37	4.92	1.62	29.28	0.94	30.22	1.36
Japan	33.32	0.43	33.75	2.19	44.16	0.96	45.57	2.04
Canada	6.93	1.47	8.40	0.55	8.48	2.17	10.65	0.48
New Zealand	1.74	0.51	2.25	0.15	1.70	0.87	2.57	0.12
Offshore Financial Centres	377.51	68.22	445.73	28.97	427.82	149.31	577.13	25.90
Latin								

America								
and Caribbean	26.90	10.73	37.63	2.45	24.75	31.74	56.49	2.53
Africa and								
Middle East	43.46	21.39	64.85	4.21	64.74	49.94	114.68	5.15
Asia and Pacific								
(including India)	43.43	5.15	48.58	3.16	62.44	9.07	71.51	3.21
Total	1,349.24	145.18	1,538.60	100.00	1,900.27	328.26	2,228.50	100.00

Annex Table 3: Illicit Flow, GFI Report, December, 2011

Rank	Country	Illicit outflow (billions of USD)
1	China	2,467
2	Mexico	453
3	Russia	427
4	Saudi Arabia	366
5	Malaysia	338
6	Kuwait	269
7	United Arab Emirates	262
8	Venezuela, BR	171
9	Qatar	170
10	Poland	160
11	Nigeria	158
12	Kazakhstan	123
13	Philippines	121
14	Indonesia	119
15	India	104
16	Ukraine	92

17	Chile	84
18	Argentina	83
19	Islamic Republic of Iran	66
20	Egypt	60

Annex Table 4: Share of Top Investing Countries FDI Equity inflows

Rank	Country	2008-09	2009-10	2010-11	2000-1 to 2010-11 Cumulative Inflows)	Percentage of Cumulative Inflows
1.	Mauritius	11,229	10,376	6,987	54,227	41.80
2.	Singapore	3,454	2,379	1,705	11,895	9.17
3.	U.S.A.	1,802	1,943	1,170	9,449	7.28
4.	U.K.	864	657	755	6,639	5.12
5.	Netherla	883	899	1,21	5,700	4.39

	nds			3		
6.	Japan	405	1,183	1,562	5,276	4.07
7.	Cyprus	1,287	1,627	913	4,812	3.71
8.	Germany	629	626	200	2,999	2.31
9.	France	427	303	734	2,264	1.75
10.	U.A.E.	257	629	341	1,890	1.46
Total FDI Inflows		27,331	25,834	19,427	129,716	100.00

Annex Table 5: List of Countries that Have Signed and ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters

	Original Convention			Protocol (P) Amended Convention (AC)		
Country	Signature (open	Deposit of instru	Entry int	Signature (opene	Deposit of instru	Entry int

	ed on 25-01-1988)	ment of ratification, acceptance or approval	o for ce	d on 27.05.2010)	ment of ratification acceptance or approval	o for ce
ARGENTINA				03-11-2011 (AC)		
AUSTRALIA				03-11-2011 (AC)		
AZERBAIJAN	26-03-2003	03-06-2004	01-10-2004			
BELGIUM	07-02-	01-08-2000	01-12-	04-04-2011		

	1992		2000	(P)		
BRAZIL				03-11-2011 (AC)		
CANADA	28-04-2004			03-11-2011 (P)		
COSTA RICA				01-03-2012 (AC)		
DENMARK	16-07-1992	16-07-1992	01-04-1995	27-05-2010 (P)	28-01-2011	01-06-2011
FINLAND	11-12-1989	15-12-1994	01-04-1995	27-05-2010 (P)	21-12-2010	01-06-2011
FRANCE	17-09-	25-05-2005	01-09-	27-05-2010	13-12-2011	01-04-

	2003		2005	(P)		2012
GEORGIA	12-10-2010	28-02-2011	01-06-2011	03-11-2010 (P)	28-02-2011	01-06-2011
GERMANY	17-04-2008			03-11-2011 (P)		
GREECE	21-02-2012			21-02-2012 (P)		
ICELAND	22-07-1996	22-07-1996	01-11-1996	27-05-2010 (P)	28-10-2011	01-02-2012
INDIA				26-01-2012 (AC)	21-02-2012	01-06-2012
INDONES				03-11-		

IA				2011 (AC)		
IRELAND				30-06-2011 (AC)		
ITALY	31-01-2006	31-01-2006	01-05-2006	27-05-2010 (P)	17-01-2012	01-05-2012
JAPAN	03-11-2011			03-11-2011 (P)		
KOREA	27-05-2010	26-03-2012	01-07-2012	27-05-2010 (P)	26-03-2012	01-07-2012
MEXICO	27-05-2010			27-05-2010 (P)		
MOLDOVA	27-01-	24-11-2011	01-03-	27-01-2011	24-11-2011	01-03-

	2011		2012	(P)		2012
NETHERLANDS	25-09-1990	15-10-1996	01-02-1997	27-05-2010 (P)		
NORWAY	05-05-1989	13-06-1989	01-04-1995	27-05-2010 (P)	18-02-2011	01-06-2011
POLAND	19-03-1996	25-06-1997	01-10-1997	09-07-2010 (P)	22-06-2011	01-10-2011
PORTUGAL	27-05-2010			27-05-2010 (P)		
RUSSIA				03-11-2011 (AC)		
SLOVENI	27-	31-01-	01-	27-05-	31-01-	01-

A	05-2010	2011	05-2011	2010 (P)	2011	06-2011
SOUTH AFRICA				03-11-2011 (AC)		
SPAIN	12-11-2009	10-08-2010	01-12-2010	11-03-2011 (P)		
SWEDEN	20-04-1989	04-07-1990	01-04-1995	27-05-2010 (P)	27-05-2011	01-09-2011
TURKEY				03-11-2011 (AC)		
UKRAINE	30-12-2004	26-03-2009	01-07-2009	27-05-2010 (P)		

UNITED KINGDOM	24-05-2007	24-01-2008	01-05-2008	27-05-2010 (P)	30-06-2011	01-10-2011
UNITED STATES	28-06-1989	30-01-1991	01-04-1995	27-05-2010 (P)		

Annex Table 6: Summary of New Swiss Treaties

Country	Date of Signing	Date of Entry into Force	Information relating to the date from which information will be given	Date from which information will be given	Prospective/ Retrospective

India	30.8.2010	7.11.2011	Fiscal year beginning on or after first day of January following the date of signature	1.4.2011	Limited retrospective
USA	23.9.2009	Not yet in force	Any date beginning on or after the date of signatu	On entering info force the information will be	Limited retrospective

			re of the Protocol	given from 23.09. 2009	
UK	7.9.2009	15.12. 2010	First day of January of the year next following the entry into force of the Protocol	1.1.2011	Only prospective
Netherland	26.2.2010	9.11.2011	Any date beginning on	1.3.2010	Limited retrospective

			or after the first day of March following the date of signature		
Russia	25.9.2011	Not yet in force	First day of January next following the entry into force	On entering info force, the information will be given from the next	Only retrospective

				Januar y	
France	27.8.2 009	4.11.2 010	Calenda r year or fiscal year beginni ng on or after 1 January of the year immedi ately followin g the date of signatu re	1.1.20 10	Limited retrospe ctive
Germa	27.10.	Not yet	Period	1.1.20	Limited

ny	2010	in force	beginning on 1 January of the year following the signing	11	retrospective

Table 7: List of DTAAa/TIEAs in force/under negotiation

S.No.	Name of the country	Date of Entry into force of DTAA/TIEA	Current status of re-negotiation to update Article on EOI and Other Articles
1	2	3	4
1	Greece	17/03/1967 *	Under renegotiation
2	Egypt	30/09/1969	Under

		*	renegotiation
3	Tanzania	16/10/1981 *	Renegotiations completed. Comprehensivel y revised DTAA signed on 27th May 2011 and entered into force on 12th December 2011
4	Libya	01/07/1982 *	Under renegotiation
5	Sri Lanka	19/04/1983 *	Renegotiations completed
6	Mauritius	06/12/1983 *	Under renegotiation
7	Zambia	18/01/1984 *	Renegotiations completed
8	Finland	18/11/1984	Renegotiation completed. Comprehensivel

			y revised DTAA signed on 15th January 2010 and entered into force on 19th April 2010
9	Kenya	20/08/1985 *	Renegotiations completed
10	Thailand	13/03/1986	Renegotiations completed.
11	Korea	01/08/1986	Under renegotiation
12	New Zealand	03/12/1986	Under renegotiation
13	Norway	31/12/1986	Renegotiations completed. Comprehensivel y revised DTAA signed on 02nd February 2011 and entered into

			force on 20th December 2011
14	Romania	14/11/1987	Renegotiations completed
15	Indonesia	19/12/1987	Renegotiations completed
16	Nepal	01/11/1988	Renegotiations completed. Comprehensively revised DTAA signed on 27th November 2011. Will enter into force on completion of internal procedure by other country.
17	Netherlands	21/01/1989	Renegotiations completed. Signed on 10th

			May, 2012. Will enter into force on completion of internal procedure by other country.
18	Denmark	13/06/1989	Under renegotiation
19	Poland	26/10/1989	Renegotiations completed
20	Japan	29/12/1989	Under renegotiation
21	USA	18/12/1990	Under renegotiation
22	Australia	30/12/1991	Renegotiations completed. Signed on 16th December 2011. Will enter into force on completion of

			internal procedure by other country
23	Brazil	11/03/1992	Renegotiations completed
24	Bangladesh	27/05/1992	Renegotiations completed
25	UAE	22/09/1993	Renegotiations completed. Signed on 16th April 2012. Will enter into force on completion of internal procedure by other country
26	UK	26/10/1993	Renegotiations completed
27	Uzbekistan	25/01/1994	Renegotiations completed. Signed on 11th

			April 2012. Will enter into force on completion of internal procedure by other country
28	Philippines	21/03/1994	Under renegotiation
29	Singapore	27/05/1994	Renegotiations completed. Signed on 24th June 2011, entered into force on 1st September 2011
30	France	01/08/1994	Renegotiations completed
31	China	21/11/1994	Under renegotiation
32	Cyprus	21/12/1994	Under renegotiation

33	Swiss Confederation	29/12/1994	Renegotiations completed. Signed on 30th August 2010, entered into force on 07th October 2011
34	Spain	12/01/1995	Renegotiations completed
35	Vietnam	02/02/1995	Under renegotiation
36	Malta	08/02/1995	Renegotiations for comprehensively revising the existing DTAA completed.
37	Bulgaria	23/06/1995	Under renegotiation
38	Italy	23/11/1995	Under renegotiation

39	Mongolia	29/03/1996	Under renegotiation
40	Israel	15/05/1996	Under renegotiation
41	Germany	26/10/1996	Under renegotiation
42	Turkey	01/02/1997	Under renegotiation
43	Canada	06/05/1997	Under renegotiation
44	Oman	03/06/1997	Under renegotiation
45	Turkmenistan	07/07/1997	Under renegotiation
46	Belgium	01/10/1997	Under renegotiation
47	Kazakhstan	02/10/1997	Under renegotiation
48	South Africa	28/11/1997	Renegotiations completed
49	Sweden	25/12/1997	Renegotiations

			completed
50	Russia	11/04/1998	Under renegotiation
51	Belarus	17/07/1998	Under renegotiation
52	Namibia	22/01/1999	Under renegotiation
53	Czech Republic	27/09/1999	Under renegotiation
54	Trinidad and Tobago	13/10/1999	Under renegotiation
55	Jordon	16/10/1999	Under renegotiation
56	Qatar	15/01/2000	Under renegotiation
57	Morocco	20/02/2000	Renegotiations completed
58	Portuguese Republic	30/04/2000	Under renegotiation
59	Kyrgyz Republic	10/01/2001	Under renegotiation

60	Austria	05/09/2001	Under renegotiation
61	Ukraine	31/10/2001	Under renegotiation
62	Ireland	26/12/2001	Under renegotiation
63	Malaysia	14/08/2003	Renegotiations completed. Signed on 9th May, 2012. Will enter into force on completion of internal procedure by other country
64	Sudan	15/04/2004	Under renegotiation
65	Uganda	27/08/2004	Under renegotiation
66	Armenia	09/09/2004	Renegotiation completed

67	Slovenia	17/02/2005	Under renegotiation
68	Hungary	04/03/2005	Under renegotiation
69	Saudi Arabia	01/11/2006	Under renegotiation
70	Kuwait	17/10/2007	Under renegotiation
71	Iceland	21/12/2007	Has provisions for exchange of banking information as per International Standards
72	Botswana	30/01/2008	Under renegotiation
73	Montenegro	23/09/2008	Under renegotiation
74	Serbia	23/09/2008	Under renegotiation
75	Syria	10/11/2008	Under

			renegotiation
76	Myanmar	30/01/2009	Has provisions for exchange of banking information as per International Standards
77	Tajikistan	10/04/2009	Has provisions for exchange of banking information as per International Standards
78	Luxembourg	09/07/2009	Provisions for exchange of banking information as per International Standards have been incorporated

			through MFN clause
79	Mexico	01/02/2010	Has provisions for exchange of banking information as per International Standards
80	Mozambique	28/02/2011	Has provisions for exchange of banking information as per International Standards
81	Taiwan	02/09/2011	Has provisions for exchange of banking information as per International Standards
82	Georgia	08/12/2011	Has provisions

			for exchange of banking information as per International Standards
83	Colombia	New DTAA	Signed on 13th May 2011. Will enter into force on completion of internal procedure by other country
84	Ethiopia	New DTAA	Signed on 25th May 2011. Will enter into force on completion of internal procedure by other country
85	Lithuania	New DTAA	Signed on 26th July 2011. Will

			enter into force on completion of internal procedure by other country
86	Estonia	New DTAA	Signed on 19th September 2011. Will enter into force on completion of internal procedure by other country
87	Uruguay	New DTAA	Signed on 8th September 2011. Will enter into force on completion of internal procedure by other country

88	Bhutan	New DTAA	Negotiations completed
89	Chile	New DTAA	Negotiations completed
90	Croatia	New DTAA	Negotiations completed
91	Fiji	New DTAA	Negotiations completed
92	Hong Kong	New DTAA	Negotiations completed
93	Latvia	New DTAA	Negotiations completed
94	Albania	New DTAA	Negotiations completed
95	Azerbaijan	New DTAA	New DTAA under negotiation
96	Iran	New DTAA	New DTAA under negotiation
97	Senegal	New DTAA	New DTAA under negotiation
98	Venezuela	New DTAA	New DTAA under

			negotiation
TIEAs			
1	Bermuda	New TIEA	Entered into force on 3rd November 2010
2	Bahamas	New TIEA	Entered into force on 1st March, 2011
3	Isle of Man	New TIEA	Entered into force on 17th March,2011
4	British Virgin Islands	New TIEA	Entered into force on 5th July, 2011
5	Cayman Islands	New TIEA	Entered into force on 8th November, 2011
6	Jersey	New TIEA	Entered into force on 8th May, 2012

7	Macau	New TIEA	Signed on 03rd January 2011. Will enter into force on completion of internal procedure by other country
8	Liberia	New TIEA	Signed on 03rd October 2011. Will enter into force on completion of internal procedure by other country
9	Argentina	New TIEA	Signed on 21st November 2011. Will enter into force on completion of

			internal procedure by other country
10	Guernsey	New TIEA	Signed on 20th December 2011. Will enter into force on completion of internal procedure by other country
11	Bahrain	New TIEA	Negotiations completed
12	Democratic Republic Congo	New TIEA	Negotiations completed
13	Costa Rica	New TIEA	Negotiations completed
14	Gibraltar	New TIEA	Negotiations completed
15	Marshall	New TIEA	Negotiations

	Islands		completed
16	Monaco	New TIEA	Negotiations completed
17	Saint Kitts & Nevis	New TIEA	Negotiations completed
18	Netherlands Antilles	New TIEA	On 12th October, 2010, Netherlands Antilles was divided into three parts. The BSE Islands became part of Netherlands municipality while Curaçao and Sint Maarten became constituent countries within the Kingdom of

			Netherlands. Request for negotiation of TIEA with Curaçao and Sint Maarten has been made separately.
19	Liechtenstein	New TIEA	Under negotiation
20	Maldives	New TIEA	Under negotiation
21	Panama	New TIEA	Under negotiation
22	Seychelles	New TIEA	Under negotiation
23	Andorra	New TIEA	Request for negotiation made
24	Anguilla	New TIEA	Request for

			negotiation made
25	Antigua and Barbuda	New TIEA	Request for negotiation made
26	Aruba	New TIEA	Request for negotiation made
27	Barbados	New TIEA	Request for negotiation made
28	Belize	New TIEA	Request for negotiation made
29	Brunei Darussalam	New TIEA	Request for negotiation made
30	Cook Islands	New TIEA	Request for negotiation made
31	Curacao	New TIEA	Request for

			negotiation made
32	Dominica	New TIEA	Request for negotiation made
33	Dominican Republic	New TIEA	Request for negotiation made
34	Faroe Islands	New TIEA	Request for negotiation made
35	Greenland	New TIEA	Request for negotiation made
36	Grenada	New TIEA	Request for negotiation made
37	Honduras	New TIEA	Request for negotiation made
38	Jamaica	New TIEA	Request for

			negotiation made
39	Montserrat	New TIEA	Request for negotiation made
40	Peru	New TIEA	Request for negotiation made
41	Saint Lucia	New TIEA	Request for negotiation made
42	Saint Vincent and the Grenadines	New TIEA	Request for negotiation made
43	Samoa	New TIEA	Request for negotiation made
44	San Marino	New TIEA	Request for negotiation made
45	Sint Maarten	New TIEA	Request for

			negotiation made
46	Turks and Caicos	New TIEA	Request for negotiation made
47	Vanuatu	New TIEA	Request for negotiation made
* Date of Notification			

List of Abbreviations

AIR	Annual Information Return
AML/CFT	Anti-Money Laundering/Combating Financing of Terrorism
APA	Advance Pricing Agreement
APG	Asia Pacific Group
AS	Accounting Standards
BIS	Bank for International Settlements
BOI	Bureau of Immigration
CAIT	Computer-Assisted Investigation Tool
CBDT	Central Board of Direct Taxes

CBEC	Central Board of Excise and Customs
CBI	Central Bureau of Investigation
CBN	Central Bureau of Narcotics
CCR	Counterfeit Currency Report
CED	Change in External Debt
CEIB	Central Economic Intelligence Bureau
CIB	Central Information Branch
CIAT	Inter-American Centre of Tax administration
CGA	Controller General of Accounts
CGDA	Controller General of Defence Accounts
COIN	Customs Overseas Investigation Network
CPC	Central Processing Centre
CPSE	Central Public Sector Enterprise
CrPC	Criminal Procedure Code
CST	Central Sales Tax
CTR	Cash Transaction Report
DARTTS	Data Analysis and Research for Trade Transparency System
DGIT	Director General of Income Tax
DGCEI	Directorate General of Central Excise

	Intelligence
DIPP	Department of Industrial Policy and Promotion
DRI	Directorate of Revenue Intelligence
DCI	Directorate of Income Tax (Criminal Investigation)
DTAA	Double Taxation Avoidance Agreement
DTAC	Double Taxation Avoidance Convention
ED	Enforcement Directorate
EOI	Exchange Of Information
EOW	Economic Offences Wing
ERP	Enterprise Resource Planning
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act 1999
FERA	Foreign Exchange Regulation Act 1973
FII	Foreign Institutional Investor
FINnet	Financial Intelligence Network
FIU	Financial Intelligence Unit
FLETC	Federal Law Enforcement Training Centre
FMCG	Fast Moving Consumer Good

f.o.b.	free on board
FSB	Financial Stability Board
FTA	Free Trade Agreement
FT&TR	Foreign Tax and Tax Research
G20	Group of Twenty
GAAR	General Anti Avoidance Rules
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GER	Gross Excluding Reversals
GFI	Global Financial Integrity
GNP	Gross National Product
GST	Goods and Services Tax
GSTN	Goods and Services Tax Network
GSTSPV	Goods and Services Tax Special Purpose Vehicle
HLC	High Level Committee
HRMS	Human Resource Management System
HSN	Harmonised System of Nomenclature
IBA	Indian Bankers Association
ICAI	Institute of Chartered Accountants of India

ICP	Immigration Check Post
IFF	Illicit Financial Flow
IMCC	Inter-Ministerial Coordination Committee of Financing of Terrorism and Prevention of Money Laundering
IMF	International Monetary Fund
INCB	International Narcotics Control Board
INTERPOL	International Criminal Police Organization
IPC	Indian Penal Code
IPO	Initial Public Offer
IPR	Intellectual Property Rights
IRDA	Insurance Regulatory and Development Authority
ITD	Income Tax Department
ITDMS	Integrated Taxpayer Data Management System
ITOU	Income Tax Overseas Unit
JNNURM	Jawaharlal Nehru National Urban Renewal Mission
JTF	Joint Task Force
KYC	Know Your Customer

LTU	Large Taxpayer unit
MHA	Ministry of Home Affairs
MLAT	Mutual Legal Assistance Treaty
MLM	Multi Level Marketing
MNE	Multi National Enterprise
MOU	Memorandum Of Understanding
MSME	Micro Small and Medium Enterprises
NAS	National Accounting System
NCAER	National Centre of Applied Economic Research
NCB	Narcotics Control Bureau
NCRB	National Crime Records Bureau
NDPS	Narcotic Drugs and Psychotropic Substance
NGO	Non Government Organisation
NIA	National Intelligence Agency
NIFM	National Institute of Financial Management
NIPFP	National Institute of Public Finance and Policy
NOC	No Objection Certificate

NPO	Non Profit Organisation
NSE	National Stock Exchange
ODI	Overseas Derivative Instrument
OECD	Organisation for Economic Cooperation and Development
OFC	Offshore Financial Centre
OLTAS	On Line Tax Accounting Systems
OSD	Officer on Special Duty
PAN	Permanent Account Number
PAO	Pay and Accounts Officer
PMLA	Prevention of Money Laundering Act 2002
PN	Participatory Note
PTA	Preferential Trade Agreement
RBI	Reserve Bank of India
REIC	Regional Economic Intelligence Council
ROC	Registrar of Companies
ROS	Registrar of Societies
SAARC	South Asian Association for Regional Cooperation
SAP	System Analysis and Program Development

SBA	Swiss Bankers association
SEBI	Securities and Exchange Board of India
SFIU	Serious Frauds Investigating Office
StAR	Stolen Assets Recovery
SMS	Short Messaging Service
STR	Suspected Transaction Report
TDS	Tax Deduction at Source
TBML	Trade Based Money Laundering
TDR	Transferrable Development Rights
TIEA	Tax Information Exchange Agreement
TTU	Trade Transparency unit
UID	Unique Identity
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
ULCRA	Urban Land Ceiling and Regulation Act
URD	Unregistered Dealers
VAT	Value Added Tax
WTO	World Trade Organisation

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ANNEXURE R-7

Ram Jethmalani v. Union of India, (2011) 8 SCC 1

Constitution of India

Arts. 32 and 144 - Black money case/Monies unaccounted for - Investigation - Special Investigation Team (SIT) headed by former Judges of Supreme Court - Constitution of, and monitoring of case by Supreme Court - Circumstances warranting - Unaccounted for/black money generated in India and deposited in foreign banks in foreign countries, involving various illegal activities like tax evasion, money-laundering, and having possible adverse effect on security of the Nation - Investigation by Government agencies concerned, although already started, proceeding very slowly and ineffectively - Some of such account-holders found to be defaulters of very large amounts of income tax with accounts running into Rs 40,000 to Rs 70,000 crores without corresponding lawful source of income - Their custodial interrogation undertaken only at behest of Supreme

Court, leading to disclosure involving important persons like politically powerful leaders, international arms dealers and corporate giants - In such circumstances, formation of High-Level Committee (HLC) by Central Government to take charge of, and direct investigation, held, was not sufficient - Hence, in view of Supreme Court's duty to uphold rule of law, and that it involved many Government departments/ agencies, with international ramifications, held, for timely and urgent action Union of India to appoint Special Investigation Team (SIT) comprising, in addition to existing constituents of HLC, (i) Director, Research and Analysis Wing (RAW), and (ii) two former Judges of Supreme Court - Duties and responsibilities of said SIT specified with mandate to keep Supreme Court informed of all major developments by filing periodic status reports, and to follow any orders issued by Supreme Court -All organs, agencies, departments and agents of UoI and State Governments directed to extend all necessary cooperation to said SIT, (2011) 8 SCC 1-A

Constitution of India

Art. 32 - Investigation - Special Investigation Team (SIT) headed by former Supreme Court Judges - Remuneration of such former Judges - Clarified that they would be entitled to their remuneration, allowances, perks, facilities as that of Judges of Supreme Court, (2011) 8 SCC 1-C

Constitution of India

Arts. 32(1) & (2), 226, 19(1)(a) & (2) and 21 - Enforcement of fundamental rights - Burden of proof - Right to know/right to information - Extent of - Special relationship between Art. 19(1) (a) and Art. 32 - Exercise of right to know as a means to effectively enforce fundamental rights under Art. 32 - Balancing right to know/information of petitioners versus right to privacy of persons concerned - In petition seeking protection of fundamental right(s), held, State cannot be an adversary - Burden of protection of fundamental right is duty of State - Hence, except as provided in Art. 19(2) or elsewhere in Constitution, held, State has duty, generally, to reveal all facts and information in its

possession to Court as well as to petitioner, (2011) 8 SCC 1-D

Constitution of India

Arts. 32(1) & (2), 19(1)(a) & (2), 21 and 368 - Enforcement of fundamental rights - Balancing right to know/right to information of petitioners versus right to privacy of persons concerned - Right to know - Extent of - Special relationship between Art. 19(1)(a) and Art. 32 - Exercise of right to know as a means to effectively enforce fundamental rights under Art. 32 - Black money case - Writ petition seeking protection of fundamental rights - Obligation of State to furnish, and right of writ petitioners to obtain, information necessary for articulating and substantiating the case and be heard - Its scope and limitations - In present case, writ petitioners alleging illegal secreting away in foreign banks in foreign countries, of money generated in India by Indians through means not known and subsequent laundering thereof involving tax evasion and various illegal activities at both stages - Alleging

that Germany had secured names and bank particulars of a large number of Indian account-holders of banks in a third country L and offered to disclose the same, Union of India neither made any serious attempt to investigate such account-holders nor did it disclose the said information to writ petitioners who had demanded the same under the Right to Information Act, 2002, the petitioners seeking investigation into said matters by Special Investigation Team (SIT) appointed herein - Union of India admitting to have obtained the said information under Indo-German Double Taxation Avoidance Agreement (DTAA) but pleading that DTAA barred it from disclosing the same even in proceedings before Supreme Court - On detailed examination of DTAA, contention of Union of India, rejected - Further held, since Arts. 32(1) & (2) are parts of basic structure of Constitution and, therefore, not amendable - So Union of India could not deny the writ petitioners herein, information necessary to articulate their case under Art. 32, especially when such information was in its possession - However, such right of petitioners does

not extend to their assuming of role of inquisitor against fellow citizens and thereby violate rights of latter under Art. 21 -Hence, revelation of details of accounts of individuals in foreign banks in the absence of prima facie grounds to accuse them of any wrongdoing, held, not permissible - Therefore, balancing these rights, detailed directions issued to Union of India for disclosure of documents and information available to the extent specified - Relationship between Art. 32(1) and Art. 19(1)(a) pointed out, (2011) 8 SCC 1-E

Income Tax

Double Taxation/Double Taxation Relief

Art. 26 - Bar of secrecy under - Scope and interpretation of - Word information, and phrase public court proceedings -Held, said bar is not absolute - Word information, occurring therein, held, does not cover information secured by Germany from a third nation-State and shared with India having no bearing

upon matters covered by the said agreement - Held, proceedings under Art. 32 of Constitution in present case before Supreme Court, held, were public court proceedings within meaning of Art. 26(1), DTAA which itself permitted disclosure of information in such proceedings -Reiterating and applying General Rule of Interpretation contained in Art. 31, Vienna Convention of the Laws of Treaties, 1969, real scope of said phrase, explained - Further held, principle of comity of nations could not be applied to restrict said provision to tax matters only as the same would render last sentence of Art. 26(1) DTAA redundant, (2011) 8 SCC 1-F

Constitution of India

Arts. 368, 32(1) & (2), 19(1) & (2) and 21 – Basic structure - Particular instances - Arts. 32(1) & (2), reiterated, are parts of basic structure of Constitution which is not amendable, (2011) 8 SCC 1-G

Constitutional Law

Grant and Separation of Powers

Limitations on exercise of power - Powers vested by Constitution in any organ of State, held, have to be exercised within four corners of the Constitution - None of such organs can change identity of Constitution itself, (2011) 8 SCC 1-H

Constitution of India

Pt. III and Art. 21 - Responsibility of State in respect of fundamental rights, such as right to privacy - Scope - Held, it is not limited to refraining from derogating from fundamental rights but extends to upholding them against action of others in the society, even in exercise of fundamental rights by such others, (2011) 8 SCC 1-E

Constitution of India

Pt. III and Art. 32 - Enforcement of fundamental rights - Making exceptions - Dangers inherent therein and slippery slope of exceptions, pointed out - Held, there is an inherent danger in making exceptions to fundamental principles and rights - Those exceptions, bit by bit, would then eviscerate content of main right

itself - Moreover, same logic could then be used by State in demanding exceptions to a slew of other fundamental rights, leading to violation of human rights of citizens on a massive scale, (2011) 8 SCC 1-J

Constitution of India

Arts. 21 and 19(1)(a) - Right to privacy - Financial/Bank account details, etc. - Scope of protection available in respect of - Balancing right to know/information of petitioners versus right to privacy of persons concerned - Held, revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrongdoing, would be a violation of their right to privacy - It is only after State has been able to arrive at a prima facie conclusion of wrongdoing, based on material evidence, would rights of others in the nation to be informed, enter the picture - Right to know cannot be extended to being inquisitors of fellow citizens, (2011) 8 SCC 1-K

Debt, Financial and Monetary Laws

Money - Functions of - Increasing monetisation of social transactions - Potentially problematic nature of, for social order and responsibilities of State in that regard, pointed out, (2011) 8 SCC 1-L

Taxation

Tax Evasion

Black money - Unaccounted for monies generated in India by Indians, and transferred and accumulated in foreign banks - Risks to nation and to State, involved in, and role of State appropriate in that regard, pointed out, (2011) 8 SCC 1-M.

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ANNEXURE R-8

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 29th May, 2014

F. No. 11/2/2009-Ad. E.D.-In pursuance of the Order dated 4.7.2011 of Hon'ble Supreme Court of India passed in Writ Petition (Civil) No. 176 of 2009, Central Government in the Ministry of Finance, Department of Revenue hereby constitutes the Special Investigation Team, comprising of the following:-

a) Hon'ble Mr. Justice M.B. Shah, former Judge of Supreme Court – Chairman

b) Hon'ble Mr. Justice Arijit Pasayat former Judge of Supreme Court - Vice Chairman

c) Revenue Secretary – Member

d) Deputy Governor, Reserve Bank of India – Member

e) Director (IB) – Member]

f) Director, Enforcement Directorate - Member;

g) Director, CBI - Member;

h) Chairman, CBDT - Member;

i) Director General, Narcotics Control Bureau-Member;

j) Director General, Revenue Intelligence - Member;

k) Director, Financial Intelligence Unit - Member;

l) Joint Secretary (FT & TR-I), CBDT - Member and

m) Director, Research and Analysis Wing - Member.

2. The terms of references of the Special Investigation Team will be as per order dated 04.07.2011 of Hon'ble Supreme Court and includes as

under:-

(i) The Special Investigation Team shall function under the guidance and direction of Chairman and Vice Chairman.

(ii) The said Special Investigation Team shall be charged with the responsibilities and duties of investigation, initiation of proceedings, and prosecution, whether in the context of appropriate criminal or civil proceedings of :-

a) all issues relating to the matters concerning and arising from unaccounted monies of Hassan Ali Khan and the Tapurias;

b) all other investigations already commenced and are pending, or awaiting to be initiated, with respect to any other known instances of the stashing of unaccounted monies in foreign bank accounts by Indians or

other entities operating in India; and

c) all other matters with respect to unaccounted monies being stashed in foreign banks by Indians or other entities operating in India that may arise in the course of such investigations and proceedings.

(iii) It is also the responsibility of SIT to ensure that the matters are also investigated, proceedings initiated and prosecutions conducted with regard to criminality and/or unlawfulness of activities that may have been the source for such monies, as well as the criminal and/or unlawful means that are used to take such unaccounted monies out of and/or bring such monies back into the country, and use of such monies in India or abroad.

(iv) The Special Investigation Team shall also be charged with the responsibility of preparing a

comprehensive action plan, including the creation of necessary institutional structures that can enable and strengthen the country's battle against generation of unaccounted monies, and their stashing away in foreign banks or in various forms domestically.

3. The said Special Investigation Team should be responsible to the Hon'ble Supreme Court and that it shall be charged with the duty to keep Supreme Court informed of all major developments by filing of periodic status reports and following of any special orders that Supreme Court may issue from time to time;

4. All organs, agencies, departments and agents of the State, whether at the level of the Union of India, or the State Government, including but not limited to all statutorily formed individual bodies, and other constitutional bodies, extend all the cooperation necessary for the functioning of Special Investigation Team.

5. The Union of India and where needed the State

Governments will facilitate the conduct of the investigations, in their fullest measure, by the Special Investigation Team and functioning, by extending all the necessary financial, material, legal, diplomatic and intelligence resources, whether such investigations or portions of such investigations occur inside the country or abroad.

6. The Special Investigation Team also empowered to further investigate even where charge-sheets have been previously filed; and that the Special Investigation Team may register further cases, and conduct appropriate investigations and initiate proceedings, for the purpose of bringing back unaccounted monies unlawfully kept in bank accounts abroad.

7. Remuneration, allowances, facilities etc. for Hon'ble Mr. Justice M.B. Shah and Hon'ble Justice Arijit Pasayat, appointed as Chairman and Vice Chairman to supervise the Special Investigation Team shall be as per judgement dated 4.7.2011. The Department of

Revenue, Ministry of Finance, Government of India will be responsible for creating the appropriate infrastructure and other facilities for proper and effective functioning of the Special Investigation Team.

8. JS(R) Department of Revenue, Ministry of Finance would be Member-Secretary of SIT.

9. This notification is subject to the outcome of the Review Petition Pending in the Supreme Court.

M. L. MEENA Jt. Secy. (Revenue)

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ANNEXURE R-9

PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA ALL MINISTRIES

Ministry of Finance 14-July, 2016 17:19 1st

Recommendations of SIT on Black Money as Contained in the Fifth SIT Report

The Fifth SIT report has been submitted before the Hon'ble Supreme Court by the SIT. An extract of the report has been uploaded on Department of Revenue website www.dor.gov.in.

The SIT has made the following recommendations in the Fifth Report:

Cash transactions: The SIT has felt that large amount of unaccounted wealth is stored and used in form of cash. Having considered the provisions which exist in this regard in various countries and also having considered various reports and observations of courts regarding cash transactions the SIT felt that there is a need to put an upper limit to cash transactions. Thus, the SIT has recommended that there should be a total ban on cash transactions above Rs. 3,00,000 and an

Act be framed to declare such transactions as illegal and punishable under law.

Cash holding: The SIT has further felt that, given the fact of unaccounted wealth being held in cash which are further confirmed by huge cash recoveries in numerous enforcement actions by law enforcement agencies from time to time, the above limit of cash transaction can only succeed if there is a limitation on cash holding, as suggested in its previous reports. SIT has suggested an upper limit of Rs. 15 lakhs on cash holding. Further, stating that in case any person or industry requires holding more cash, it may obtain.

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ANNEXURE R-10

THE HIGH DENOMINATION BANK NOTES (DEMONETISATION) ACT, 1978

ACT NO. 11 OF 1978

[30th March, 1978.]

An Act to provide in the public interest for the demonetisation of certain high denomination bank notes and for matters connected therewith or incidental thereto.

WHEREAS the availability of high denomination bank notes facilitates the illicit transfer of money for financing transactions which are harmful to the national economy or which are for illegal purposes and it is therefore necessary in the public interest to demonetise high denomination bank notes;

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:-

1. Short title, extent and commencement.-(1) This Act may be called the High Denomination Bank Notes (Demonetisation) Act, 1978.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 16th day of January, 1978.

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) "bank" means-

(i) a banking company as defined in clause (c) of section 5 of the Banking Regulation

Act, 1949 (10 of 1949);

(ii) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);

(iii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(iv) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(v) a regional rural bank established under sub-section (7) of section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);

(vi) a co-operative bank as defined in section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

and includes every branch thereof;

(b) "bank notes" means the bank notes issued by the Reserve Bank of India under section 22 of the Reserve Bank of India Act, 1934 (2 of 1934);

(c) "distinctive number" in relation to a high denomination bank note means the number including the alphabetical and numerical prefixes appearing on the face of the note;

(d) "high denomination bank note" means a bank note of the denominational value of one thousand rupees, five thousand rupees or ten thousand rupees, [1][issued by the Reserve Bank

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immediately before the commencement of this Act];

(e) "public sector bank" means a bank referred to in sub-clause (ii), (iii) or (iv) of clause (a);

(f) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934);

(g) "scheduled bank" means a public sector bank or any other bank, being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(h) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955).

3. High denomination bank notes to cease to be legal tender.- On the expiry of the 16th day of January, 1978, all high denomination bank notes shall, notwithstanding anything contained in section

26 of the Reserve Bank of India Act, 1934 (2 of 1934), cease to be legal tender in payment or on account at any place.

4. Prohibition of transfer and receipt of high denomination bank notes.- Save as provided by or under this Act, no person shall, after the 16th day of January, 1978, transfer to the possession of another person or receive into his possession from another person any high denomination bank note.

5. Declaration of high denomination bank notes by banks and Government treasuries.-(1) Every bank and Government treasury shall prepare and send to the Reserve Bank in the manner provided in this section a return showing separately under each denominational value the total value of high denomination bank notes of that value held by it at the close of business on the 16th day of January, 1978 and distinctive numbers of high denomination bank notes of that value:

Provided that a bank or a Government treasury in which the currency chest of the Issue Department of the Reserve Bank has been established shall also submit a separate return showing separately under each denominational value the total value of high denomination bank notes held in such currency chest at the close of business on the 16th day of January, 1978 and the distinctive numbers of high denomination bank notes of that value.

(2) Every such return shall be prepared and presented as provided in sub-section (3) in triplicate and shall be signed by the Manager of the bank or other person in charge of the bank or the Government treasury.

(3) Every return under sub-section (7) shall be presented for forwarding to the Reserve Bank to the Manager of the sub-office, office or branch of the Reserve Bank at the places specified under sub-section (2) of section 7, or to the District Magistrate, or to the Sub-divisional Magistrate or,

if such Manager or Magistrate is not available, to the senior-most Revenue or Police Officer available not later than 3.00 P.M. on the 17th day of January, 1978:

Provided that if it is not feasible to present the return to any such person as aforesaid, it may be presented by handing two copies thereof not later than 3.00 P.M. on the 17th day of January, 1978 to a telegraph office, one copy for despatch by express telegram to the Reserve Bank at Bombay at the expense of the bank or the Government treasury, as the case may be, and the other copy for return to the person presenting it in the manner provided in sub-section (4), and by despatching the third copy required by sub-section (2) by registered post on the same day to the Reserve Bank at Bombay.

(2) The officer to whom the return is presented shall give back to the person presenting it one copy thereof under his signature and seal of office in acknowledgement of receipt on which shall also

be recorded the time and date of receipt, and such officer shall without delay forward one copy of the return to the Reserve Bank at Bombay.

(3) The Manager or other person in charge of every bank or Government treasury shall, immediately after the preparation of the returns required to be submitted under this section, cause the high denomination bank notes mentioned therein to be kept in a separate receptacle and seal the same with his seal and of the officers having custody of such receptacle.

6. Exchange of high denomination bank notes held by banks and Government treasuries.-(1)A bank other than a public sector bank may obtain from the Reserve Bank or a public sector bank an equivalent amount in exchange for the high denomination bank notes declared by it in the return referred to in section 5 by credit to an account maintained with the Reserve Bank or a public sector bank or in bank notes.

(2) A public sector bank may obtain from the Reserve Bank an equivalent amount in exchange for the high denomination bank notes declared by it in the return referred to in section 5 or the high denomination bank notes received by it in exchange under sub-section (7) by credit to an account with the Reserve Bank or in bank notes.

(3) A Government treasury may obtain from the Reserve Bank an equivalent amount in exchange for the high denomination bank notes declared by it in the return referred to in section 5 in bank notes or by credit to Government account.

(4) Notwithstanding anything contained in sub sections (7), (2) and (3), where the return referred to in section 5 is presented in the manner provided in the proviso to sub-section (3) of that section, the exchange referred to in this section may be effected only by the Reserve Bank at Bombay.

(5) Every application for the exchange of high

denomination bank notes under this section shall be accompanied by the copy of the return received under sub-section (4) of section 5 which contains the distinctive numbers of such bank notes.

7. Exchange of high denomination bank notes held by other persons.-(1) Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 1934 (2 of 1934), any high denomination bank note owned by a person other than a bank or Government treasury may be exchanged after the 16th day of January, 1978, only on tender of the note-

(a) where the high denomination bank note is owned by an individual, by the individual himself; or where the individual. is absent from India, by the individual concerned or some person duly authorised by him in this behalf; or where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) where the high denomination bank note is owned by a Hindu undivided family, by the karta, and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of his family;

(c) where the high denomination bank note is owned by a company, by the managing director thereof, or, where for any unavoidable reason such managing director is not able to tender the note, or; where there is no managing director, by any director thereof;

(d) where the high denomination bank note forms part of the assets of a firm, by the managing partner thereof, or, where for any unavoidable reason such partner is not able to tender the note, or where there is no managing partner as such, by any partner thereof not being a minor;

(e) where the high denomination bank note is owned by any other association of persons, by any

member of the association or the principal officer thereof; and

(f) where the high denomination bank note is owned by any other person, by that person or by some person competent to act on his behalf;

and within the time and in the manner provided in this section.

(2) Every person desiring to tender for exchange a high denomination bank note under this section shall prepare in the form set out in the Schedule three copies of a declaration signed by him giving in full the particulars required by that form and shall, not later than the 19th day of January, 1978, deliver such copies in person together with the high denomination bank notes he desires to exchange-

(a) to either of the offices of the Reserve Bank at Bombay or to the sub-office, office or branch, as the case may be, of that bank at Ahmedabad,

Bangalore, Bhubaneshwar, Calcutta, Gauhati, Hyderabad, Jaipur, Kanpur, Madras, Nagpur, New Delhi and Patna; or

(b) to the main office or branch of the State Bank at the headquarters of a district; or

(c) to any other office of a public sector bank notified in this behalf by the Reserve Bank:

Provided that if such person resides in a place not within convenient reach of any such office or branch, or if, by reason of age, infirmity or illness he is unable to attend thereat, he may forward the high denomination bank notes he desires to exchange together with three copies of the declaration in respect thereof by insured post to the Reserve Bank at Bombay not later than the 19th day of January, 1978.

(3) Every declaration under this section shall, for the purpose of identifying the person making it, be attested by the manager or other person in

charge of the bank, if any, with which he maintains an account, or by a salaried Magistrate or a Justice of the Peace or a police officer not below the rank of an Inspector of Police.

(4) Unless it appears that the declaration has not been complete in all material particulars, the Reserve Bank, the State Bank or any bank notified under clause (c) of sub-section (2), as the case may be, to which an application for exchange of high denomination bank notes is made under this section, shall pay the exchange value of the said notes for credit to a properly introduced account of the owner or the declarant, as the case may be, with any scheduled bank:

Provided that if the owner or declarant, as the case may be, does not have a bank account, the exchange value of the said notes shall be paid only on proper identification and until payment is so made, the amount shall remain in the custody of the Reserve Bank or the bank, as the case may be, to which the

high denomination bank notes were tendered.

(5) Where it appears that the declaration has not been completed in all material particulars, the Reserve Bank, the State Bank or the notified bank, as the case may be, to which such application as aforesaid is made shall, unless the declarant is able to supply the omission without delay, refuse to accept and pay for the bank notes to which the declaration relates, and where it does so refuse, shall return one copy of the declaration to the declarant after entering therein the date on which it is presented and shall refer the matter to the Central Government to which it shall forward a copy of the declaration with a brief statement of the reasons for refusing to pay for the bank notes.

(6) The Central Government may require any declarant referred to in sub-section (5) to amplify his declaration to such extent and in respect of such particulars as it thinks fit and may, unless the declarant is able to fully comply with such

requirement, refuse, for reasons to be recorded in writing, to sanction the exchange of the high denomination bank notes to which the declaration relates.

(7) The Central Government or any person or authority authorised by it in this behalf may, by order in writing and for reasons to be recorded therein, extend in any case or class of cases the period during which high denomination bank notes may be tendered for exchange under this section.

8. Exchange of notes after the time limit specified in section 7.-(1) Notwithstanding anything contained in section 7, any person who fails to apply for exchange of any high denomination bank notes within the time provided in that section may tender the notes together with the declaration required under that section to the Reserve Bank at any of the places specified in clause (a) of sub-section (2) of that section, not later than the 24th day of January, 1978

together with a statement explaining the reasons for his failure to apply within the said time limit:

Provided that if such person resides in a place not within convenient reach of the sub-office, office or branch of the Reserve Bank at any of the said places or if, by reason of age, infirmity or illness, he is unable to attend thereat, he may forward the high denomination bank notes he desires to exchange together with three copies of the declaration required under section 7 by insured post to the Reserve Bank at Bombay not later than the 24th day of January, 1978, along with a statement explaining the reasons for his failure to apply within the time specified in section 7.

(2) The Reserve Bank may, if satisfied after making such inquiries as it may consider necessary that the reasons for the failure to submit the notes for exchange within the time provided in section 7 are genuine, pay the value of the notes in the manner specified in sub-section (4) of that section.

(3) Any person aggrieved by the refusal of the Reserve Bank to pay the value of the notes under sub-section (2) may prefer an appeal to the Central Government within fourteen days of the communication of such refusal to him.

9. Closing of banks and Government treasuries.-(1) All banks and Government treasuries shall be closed on the 17th day of January, 1978 for the transaction of all business except the preparation and presentation or, as the case may be, receipt of the returns referred to in section 5.

(2) Subject to the provisions of sub-section (7), the 17th day of January, 1978 shall, for the purposes of the Negotiable Instruments Act, 1881 (26 of 1881), be deemed to be a public holiday notified under that Act.

10. Penalties.-(1) If any bank fails to prepare and present within the time and in the manner provided by section 5 any return referred to in that section, or presents any return under that section

which is false in any material particular, the manager or other person in charge of the bank shall, unless he proves that the failure took place, or the false return was presented, without his knowledge or that he exercised all due diligence to prevent the same, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) Whoever knowingly makes in any declaration under section 7 any statement which is false or only partially true or which he does not believe to be true or contravences any provision of this Act or the rules made thereunder shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) An officer of a scheduled bank who makes payment out of the amount, being the exchange value of a high denomination bank note credited under sub-section (4) of section 7 to an account maintained with such bank shall unless such

account is an account which has been opened after proper introduction, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

11. Special provisions relating to offences.-(1) No prosecution for an offence punishable under this Act shall be instituted except with the previous sanction of the Central Government.

(2) Notwithstanding anything in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), the court of a Magistrate of the first class or the court of a Metropolitan Magistrate trying an offence punishable under this Act may impose a fine exceeding five thousand rupees.

12. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or against the Reserve Bank or any public sector bank or any officer of such bank for anything done or intended to be done in good faith under this Act.

13. Removal of difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by notification in the Official Gazette, make any order, not inconsistent with the provisions of this Act, which appears to it to be necessary for the purpose of removing the difficulty:

Provided that every such order shall, as soon as may be after it is made, be laid before each House of Parliament.

14. Power to make rules.-(7) The Central Government may make rules for giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

(a) the custody and disposal of high denomination bank notes tendered for exchange under this Act and of the declarations in respect

thereof;

(b) the time within which applications referred to in sub-section (5) of section 6 may be made; and

(c) the time within which and the manner in which the State Bank and public sector banks notified under clause (c) of sub-section (2) of section 7 may claim reimbursement from the Reserve Bank of payments made by them in respect of high denomination bank notes accepted by them under that section.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions

aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

15. Repeal and saving.-(7) The High Denomination Bank Notes (Demonetisation) Ordinance, 1978 (1 of 1978) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See section 7(2)]

FORM OF DECLARATION

(To be filled in triplicate)

1. Name of the owner of the bank notes

(In block letters)

2. Address: Office

Residence

3. Status, i,e., whether individual, Hindu undivided family, company, firm, etc.

4. (a) Whether assessed to income-tax;

(b) If so, name of the Income-Tax Circle/Ward/District where last assessed;

(c) Permanent Account Number.

5. If engaged in business, profession or vocation, name in which such business is carried on.

6. Principal place of business, profession or vocation, and location and style of each branch.

7. In the case of a firm, name and address of each partner.

8. In the case of partner in a firm, name and address of each firm or firms in which he is a partner.

9. In the case of a salaried person, amount of salary per annum.

10. In the case of a Government employee, Government Department and post held.

11. In the case of a retired Government employee, last post held, Government Department under which such post was held and date of retirement.

12. In the case of a retired employee of a non-Government employer, particulars of last post held.

13. In the case of any other person, particulars of profession or vocation or, as the case may be, former profession or vocation.

14. Particulars of high denomination bank notes tendered.

Denomination	Number of Notes	Distinctive Number*	Total value
Rs.1000			
Rs. 5000			
RS. 10000			

			Rs. Rupees (in words)

Distinctive numbers of bank notes tendered should be furnished indicating alphabetical and numerical prefixes of the notes. Attach a statement if space is not adequate.

15. Reasons for keeping the amount in cash in notes of such high denominations

16. When and from what source did the bank notes come into possession?

17. If any of the notes tendered represent borrowings, the name (s) and address (es) of the persons from whom borrowed and the dated on which borrowed.

18. Manner in which payment of value of the bank notes is desired; *i.e.*, in cash or payment to bank, etc.

19. If payment is to be made into a bank account, full details of the bank account.

20. Has any other declaration been made in respect of other bank notes of the owner? If so, state full particulars.

21. If the declarant is not the owner of the bank notes, capacity in which declaration is signed.

I,_____, son/daughter/wife of_____ hereby solemnly declare (name in block letters) (name of father/husband) that the particulars furnished above are full, true and correct to the best of my knowledge and belief. I further declare that the bank notes tendered herewith belong to me to_____and are not held benami. name of owner of bank notes not filed any other declaration under this Act.

I also solemnly affirm that I have_____ filed another/other declaration (s) as per particulars attached.

I further declare that I am making this declaration in my capacity as_____and that I am competent to make this declaration and verify it,

designation, etc.

Place:
Date:

.....
(Signature of declarant)

I,_____hereby testify that I know the declarant and certify that the (name in block letters) above declaration was signed in my presence.

Place:
Date:

.....
(Signature and designation)

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ANNEXURE R-11

SUPREME COURT OF INDIA

Supreme Court of India
Jayantilal Ratanchand Shah vs Reserve Bank Of India & Ors on 9 August, 1996

Equivalent citations: JT 1996 (7), 681 1996 SCALE (5)741

Author: M M.K.

Bench: Kuldip Singh (J), Punchhi, M.M., Singh N.P. (J), Mukherjee M.K. (J), Ahmad Saghir (J)

PETITIONER: JAYANTILAL RATANCHAND SHAH

Vs.

RESPONDENT: RESERVE BANK OF INDIA & ORS.

DATE OF JUDGMENT: 09/08/1996

BENCH: MUKHERJEE M.K. (J)
BENCH: MUKHERJEE M.K. (J)
KULDIP SINGH (J)
PUNCHHI, M.M. SINGH N.P. (J)

CITATION:
JT 1996 (7) 681 1996 SCALE (5)741

ACT:

HEADNOTE:

JUDGMENT:

WITH WRIT PETITION (C) NOS. 97-100 OF 1981
Devkumar Gopaldas Aggarwal & Ors.

V.

Reserve Bank of India & Anr.

JUDGMENT M.K. MUKHERJEE. J.

The constitutional validity of the High Denomination Bank Notes (Demonetization) Act, 1978 (hereinafter referred to as the 'Demonetization Act) and the legality of certain orders passed thereunder are under challenge in these petitions under Article 32 of the Constitution of India. The Act replaced an Ordinance, bearing a similar title, which was promulgated by the President and had come into force on January 16, 1978. To appreciate the contentions raised on behalf of the petitioners it will be necessary, at this stage to refer not only to the relevant provisions of the Demonetization Act but also of the Reserve Bank of India Act, 1934 ('RBI Act for short), which empowers Reserve Bank of India (Bank for short) to issue bank notes and imposes an obligation upon it to exchange those notes.

The Bank has been constituted under the RBI Act to regulate the issue of bank notes and the keeping of reserves with a view to security monetary stability in India and generally to operate the currency and credit system of the country to its advantage. Section 22 of that Act provides that the Bank shall have the sole right to issue bank notes. Section 24, which prescribes the denomination of the notes, reads as under:

> (1) Subject to the provisions of sub-section (2) bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board, specify in this behalf.
>
> (2) The central Government may, on the recommendation of the Central Board, direct the non-issue of the such discontinuance of issue of

bank notes of such denominational values as it may specify in this behalf."

Section 26 lays down that every bank note shall be legal tender at any place in India in payment or on account of the amount expressed therein and shall be guaranteed by the Central Government. It further lays down that on recommendation of the Central Board the Central Government may however by notification in the Gazette of India declare that with effect from such data as may specified in the notification any series of bank notes of any denomination shall cease to be legal tender except at such office or agency of the Bank and to such extent as may be specified in the notification. The other Section of the RBI Act relevant for our purposes is Section 39 which imposes on the Bank an express obligation to issue, rupee coin or notes of lower values on demand, in exchange for bank notes and currency notes of the Government of India.

On a conspectus of the above provisions of the RBI Act is patently clear that Bank is the sole note

issuing authority and has the obligation to exchange those notes when demand except when, and to the extent, it is relieved of that obligation by the Central Government.

Coming now to the Demonetization Act as we first find that high denomination bank note has been defined in Section 2 (d) to mean a bank note of the denominational value of the one thousand rupees, five thousand rupees or ten thousand rupees issued by the Reserve Bank. Section 3 declares that on expiry of January 16, 1978 all high denomination bank notes shall notwithstanding anything contained in Section 26 of the Reserve Bank of India Act, 1934 (emphasis supplied) cease to be legal tender in payment or on account at any place. Section 4 which prohibits transfer and receipt of high denomination bank notes reads as follows:

"Save as provides by or under this Act, no person shall, after the 16th of January, 1978, transfer to possession of another person or receive into his

possession from another person any high denomination bank note."

Section 7 and 8 of the Demonetization Act, around which a large part of the arguments of the petitioners revolves, reads as under :

"Section 7, Exchange of high denomination bank notes held by other persons:-

(1) Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 1934, any denomination bank note owned by a person other than a bank or Government Treasury may be exchanged after the 16th day of January, 1978, only on tender of the note ----.

(a) where the high denomination bank note is owned by an individual, by the individual himself; or where the individual is absent from India, by the individual concerned or some person duly authorized by him in this behalf; or where the individual is mentally incapacitated from attending to his affairs, by his guardian or

by any other person competent to act on his behalf;

(b) tof..... and within the time and in the manner provided in this section. (2) Every person desiring to tender for exchange a high denomination bank note under this section shall prepare in the form set out in the Schedule three copies of a declaration signed by him giving in the full and shall, not later than the 19th day of January, 1978, deliver such copies in person together with the high denomination bank notes he desires to exchange -

(a) to (c) ....

Provided that if such person resides in a place not within convenient reach of any such office or branch, or if, by reason of age, infirmity or illness he is unable to attend thereat, he may forward the high denomination bank notes he desires to exchange together with three copies of the declaration in respect thereof by insured post to the Reserve Bank

at Bombay not later than the 19th day of January, 1978.

(3) ....

(4) Unless it appears that the declaration has not been complete in all material particulars, the Reserve Bank, the State Bank or any Bank notified under the State of Bank or any Bank notified under Cl.

(c) of sub-section (2) as the case may be, to which an application for exchange of high denomination bank notes is made under this section, shall pay the exchange value of the said notes shall be paid only on proper identification and until payment is so made, the amount shall remain in the custody of the Reserve Bank or the Bank, as the case may be, to which the high denomination bank notes were tendered.

(5) where it appears that the declaration has not been completed in all material particulars, the Reserve Bank, the State Bank or the notified Bank ,

as the case may be, to which such application as aforesaid is made shall, unless the declarant is able to supply the omission without delay, refuse to accept and pay for the bank notes to which the declaration relates, anywhere it does so refuse,shall return one copy of the declaration to the declarant after entering therein the date on which it is presented and shall refer the matter to the Central Government to which it shall forward a copy of the declaration with a brief statement of the reasons for refusing to pay for the bank notes. (6) The Central Government may require any declarant referred to in sub-section (5) to amplify his declaration to such extent and in respect of such particulars as it thinks fit and may, unless the declarant is able to fully comply with such requirement refuse, for reasons to be recorded in writing, to sanction the exchange of the high denomination bank notes to which the declaration relates. (7) The Central Government or any person or authority authorized by it in this behalf may, be order in writing and for reasons to be recorded therein,

extend in any case or class of cases the period during which high denomination bank notes may be tendered for exchange under this section.

Section 8 - Exchange of notes after the time limit specified in 6.7 (1) Notwithstanding anything contained in 6.7, any person who fails to apply for exchange of any high denomination bank notes within the time provided in that section may tender the notes together with the declaration required under that section to the Reserve Bank at any of the places specified in clause

(a) of sub-section (2) of that section, not later than 24th day of January, 1978 together with a statement explaining the reasons for his failure to apply within the said time limit :

Provided that if such person resides in a place not within convenient reach of the sub-office, office or branch of the Reserve Bank at any of the said places on if, by reason of age, infirmity or illness, he is unable to attend thereat, he may forward the high

denomination bank notes he desires to exchange together with the three copies of the declaration required under 5.7 by post to the Reserve Bank at Bombay not later than the 24th day of January, 1978, along with a statement explaining the reasons for his failure to apply within the time specified in Section 7.

(2) The Reserve Bank may, if satisfied after making such inquiries as it may consider necessary that the reasons for the failure to submit the notes for exchange within the time provided in 6.7 are genuine, pay the value of the notes in the manner specified in sub-section (4) of that section.

(3) Any person aggrieved by the refusal of the Reserve Bank to pay the value of the notes under sub- section (2) may prefer an appeal to the Central Government within fourteen days of the communication of such refusal to him."

In assailing the Demonetization Act is was contended on behalf of the petitioners that it violated

their fundamental rights enshrined in Articles 19 (1) (f) and 31 of the Constitution (since repealed), which were available to them at the material time. In elaborating their contention it was submitted that Bank to make payment of high denomination bank notes whenever tendered and the Central Government guaranteed such payment but on promulgation of the impugned Act those notes ceased to be legal tender, notwithstanding the above provision of the RBI Act, in view of Section 3 thereof; and, resultantly, the Bank and for that matter the Central Government stood discharged of their such obligations. In other words, according to the petitioners, the impugned Act extinguished the debts due and owing from the Bank to the holders of the high denomination bank notes. the petitioners contended that such extinguishment of debts amounted to compulsory acquisition of property within the meaning of Article 31(2) of the Constitution and since the acquisition was not made for a public purpose nor adequate and appropriate

provisions were incorporated in the impugned Act for payment of compensation in respect thereof the impugned Act was violative of the above Article. Besides,the petitioners contended, they had a right to acquire and hold the high denomination bank notes and to carry on any trade or business by using the same in the course thereof and the Demonetization Act in so far as it provided for non- payment of exchange value of high denomination bank notes except in those cases mentioned in Section 7 and 8 thereof, it imposed unreasonable restriction on their fundamental rights under Article 19 (1) (f) and (g) of the Constitution. Since it cannot be disputed that the direct effect of the High Denomination Bank Notes (Domination Bank Notes (Demonetization) Ordinance, 1978 is the wiping out of a public debt owing to the holders of the high denomination bank notes from the state, the other contention of the petitioners that their property was compulsorily acquired has got to be accepted in view of Pathak vs. Union of India (1978) 2 SCC 50 wherein

it has been held that property within the meaning of Article 19 (1) (f) and clause (2) of Article 31 comprises every form of property, tangible or intangible, including debts and chooses in action and that extinguishment of a public debt due and owing from the State amounts to compulsory acquisition of such debt.

The next question that necessarily falls for determination is whether such acquisition was for a public purpose for under Article 31 (2) no property could be compulsorily acquired except for a public purpose. To answer this question we may profitably look to the preamble of the Demonetization Act which reads as follows:

Whereas the availability of high denomination bank notes facilities the illicit transfer of money for financing transactions which are harmful to the national economy or which are for illegal purposes and it is therefore necessary in the public interest to demonetize high denomination bank notes."

From the above preamble it is manifest that the Act was passed to avoid the grave menace of unaccounted money which had resulted not only in affecting seriously the economy of the country but had also deprived the State Exchanger of vast amounts of its revenue. Considering the evil the above Act sought to remedy it cannot be said that it was not enacted for a public purpose. The petitioners other contention based on 19 (1) (f) and (g) of the Constitution is wholly misconceived for after compulsory acquisition of their property by the impugned Act the petitioners right thereto stood extinguished and consequently the question of reasonable restriction to the exercise or enjoyment of a right, which became non est, could not arise. Equally untenable is the petitioners right they were deprived of their right to get compensation for such acquisition, as Sections 7 & 8 of the Demonetization Act lay down an elaborate procedure to apply for and obtain an equal value of the high denomination bank notes in the manner prescribed thereunder.

It was, however, contended on behalf of petitioners that even if it was assumed that Article 31 had not been violated the time prescribed for exchange of the high denomination bank notes under Sections 7 and 8 of the Demonetization Act was unreasonable and violative of their fundamental rights. When the above provisions of the Act are considered in the context of the purpose the Demonetization Act sought to achieve, namely, to stop circulation of high denomination bank notes as early as possible, the above contention of the petitioners cannot be accepted. Consequent upon the high denomination bank notes ceasing to be legal tender on the expiry of January 16, 1978 and in view of the prohibition in the transfer of possession of such notes from one person to another thereafter as envisaged under Section 4, it was absolutely necessary to ensure that no opportunity was available to the holders of high denomination bank notes to transfer the same to the possession of others. At the same time it was necessary to afford a

reasonable opportunity to the holders of such notes to get the same exchanged. However, if the time for such exchange was not limited the high denomination bank notes could be circulated and transferred without the knowledge of the authorities concerned from one person to another and any such transferee could walk into the Bank on any day thereafter and demand exchange of his notes. In that case it would have been well high impossible for the Bank to prove that such a person was not the owner or holder of the notes on January 16, 1978. Needless to say in such an eventually the very object which the Demonetization Act sought to achieve would have been defeated. Obviously, to strike a balance between these competing and disparate considerations that Section 7 (2) of the Demonetization Act limited the time to exchange the notes till January 19, 1978. However, even thereafter, in view of Section 8, the high denomination bank notes could be exchanged from the Bank till January 24, 2978 provided the tenderers

was able to explain the reasons for his failure to apply for such exchange within the time stipulated under Section (2) of Demonetization Act. Apart from the above provisions regarding exchange of high denomination bank notes by the Bank within the time stipulated therein, provision has been made in sub-section

97) of Section 7, permitting the Central Government, for reasons to be recorded in writing, to extend in any case or class of cases the period during which high denomination bank notes may be tendered for exchange. From a combined reading of Sections 7 and 8 it is evidently clear that on furnishing a declaration complete in all particulars in accordance with sub-section (2) of Section 7 by January 19, 1978, the holder was entitled to get the exchange value of his notes from the Bank without any let or hindrance; thereafter, till January 24, 1978, he was entitled to such exchange from the Bank if he could satisfactorily explain the reasons for his inability to

apply by January 19, 1978 and after that date the Central Government was empowered to extend the period of such exchange. Such being the scheme of the Act regarding exchange of high denomination bank notes it cannot be said that the time and the manner in which the high denomination bank notes could be exchanged were unreasonable, unjust and violative of the petitioners fundamental rights.

Now that we have found the Demonetization Act to be a valid piece of legislation, we may proceed to consider whether the orders passed by the respondents, in exercise of their powers thereunder, refusing to exchange the high denomination bank notes of the respective petitioners of the writ petitions are justified or not.

WRIT PETITION NO. 1188 OF 1979 The Petitioner is the Chairman of a relief Society which runs a medical dispensary at Surat. In the year 1974 the Executive Committee of the Society decided to construct a public charitable hospital. With that object

in view the Executive Committee decided to collect funds through donations and for that purpose donation boxes were kept at Surat and Bombay. As per Managing Committee's resolution dated August 4, 1974 these boxes were opened from time to time in presence of the Chairman and Vice-Chairman of the Society and the amounts so collected were recorded in separate minute books.

Accordingly to petitioner, immediately after the promulgation of the High Denomination Bank Notes (Demonetization) Ordinance, 1978, on January 16, 1978 instructions were given to the office bearers of the Society both at Bombay and Surat not accept any deposit or to allow anyone to deposit any high denomination bank notes in the collection boxes after midnight of January 16, 1978. For that purpose the boxes at Surat and Bombay were taken possession of by the respective offices bearers and steps were taken by the Society to open the boxes. The collection boxes at Bombay, which were opened in the afternoon of January 17, 1978, were found to

contain Rs. 22,11,000/- in high denomination bank notes. The amount so received was properly minuted in the minute book and entered in the cash book. Thereafter the Society obtained the requisite statutory declaration form to be submitted for exchange of those notes and along with the declaration delivered the notes to the State Bank of India, Bombay on January 19, 1978.

As regards the boxes at Surat the petitioner's case is that they were opened on January 20, 1978 and found to contain Rs. 34,76,000/- in high denomination bank notes. The above sum of money along with the requisite declaration was deposited by the petitioner in the bank in Bombay on January 23, 1978 along with a letter explaining the delay for failure to deposit the same within the prescribed time. Thereafter from time to time the Society addressed letters to the State Bank of India, Bombay asking for the payment of the value of the high denomination bank notes deposited. But it did not receive any reply thereto until April 25, 1978, when

the Society received an order of the Currency Officer of the Bank rejecting their claim for exchange of the high denomination Bank notes receive in Surat on the grounds, that the Society had not explained satisfactorily its failure to open the collection boxes immediately after the issue of the Ordinance and that it had not been established to his satisfaction that the notes had reached the Society before demonetization. Aggrieved by the above order the Society preferred an appeal under Section 8 (3) of the Demonetization Act to the Central Government. After giving a personal hearing to the Society the Central Government dismissed the appeal with the following findings:

> "As far as the notes found at Surat are concerned, the Government of India agree with the Reserve Bank of India that the failure on the part of the trust to open after the issue of Ordinance has not been satisfactorily explained. The trustees have admitted knowledge of the promulgation of the Ordinance on the evening of

16th January, 1978 and opened the boxes at Bombay on 17th of January, 1978 and then declared on the 23rd of January, 1978 does leave scope for doubt as to whether the trust was in possession of the high denomination notes on or before the 16th January, 1978 and not subsequently. The Trust has also furnished details of the collection from the boxes on earlier occasions, During 1977 the boxes were opened on five occasions, the details of the which are as follows:-

Details of cash boxes collection at Surat 1977 Amount January Rs.18,012 April Rs.16,161 May Rs. 56,000 June Rs. 10,000 11th November Rs. 20,051 On the previous occasions the amounts were much less and on 11thNovember, 1977 they were only Rs. 20,051/-. Thus in more than 5 months, June 77 to November 77, the total collections were a little over to Rs. 20,000/- which come to an average of about Rs. 5,000/- per month. Keeping these facts in view it seems,

most unlikely that the donations in the next two months i.e. November, 1977 to January 16, 1978 would aggregate to Rs.34,74,519/- out of which denomination notes besides the appellant had also not been able to prove that even in the past the trust was getting donations in high denomination notes from the charity boxes and that this was a regular feature."

In impugning the order of the Currency Officer of the Bank it was submitted on behalf of the petitioner that no opportunity of being heard was given to the Society so as to enable it to explain the reasons for delay in submitting the declaration form. Even if we proceed on the assumption that such an opportunity for personal hearing was imperative to comply with the rules of natural justice the petitioner cannot raise any grievance on that score for the Appellate Authority gave them such an opportunity before dismissing their appeal. This apart, as noticed earlier, the Appellants Authority has given detailed reasons for its inability to accept the explanation of

the Society for not filing the declaration in time. Under the Demonstration Act if a holder of high denomination bank notes had acquired those notes after January 16, 1978 he would not be entitled to exchange the same, if therefore, the Bank and Central Government obtained a satisfaction that the Society failed to prove that the high denomination bank notes for which value was claimed had reached its hands on or before January 16, 1978 payment could legitimately be refused. It was however contended that the respondents having accepted their claim for exchange in respect of notes found in the collection boxes of Bombay ought to have accepted their explanation offered by them in respect of the notes received at Surat. It appears that this contention was raised before the Appellate Authority which rejected the same with the following observations:

> "The Government of India have carefully considered all the facts of the case and are of the view that the decision regarding the amount

found in the charity boxes maintained at Bombay which were opened on the 17th and declared on the 19th has hardly any relevant to the decision taken on the notes found in the charity boxes at Surat. The declaration regarding the notes found in the donation boxes at Bombay was within the prescribed time i.e. January, 1978 and if the forms were complete in all material particulars the bank had no alternative but of exchange the notes in accordance with the provisions of law. However, for the declarations filed after the 19th till 24th the declarant had to satisfy the Reserve Bank was fully satisfied could not notes be exchanged. It is therefore, clear that the notes found in the boxes at Bombay and those found at Surat stand on a different footing."

We need not however deliver into the matter any further, for the above findings are of facts and nothing has been brought to our notice to indicate that the impugned orders are perverse. Indeed, the

materials on record persuade us to hold that the reasons which weighed with the authorities to refuse payment to the Society in exchange of their high denomination bank notes are cogent and we, therefore, do not find any merit in this petition. WRIT PETITION NOS. 97-100 OF 1981 The petitioners herein are the trustees of Tulsiram Mansadevi Charity Trust (Trust for short) which is registered as a public charitable Trust under the Bombay Public Trusts Acts, 1950. The objects of the Trust, amongst others, is to render help to the poor and destitute. According to the petitioners, sometimes in 1977 one Gopaldas Aggarwal Foundation, (Foundation for short a trust having common trustees with the Trust started a donation collection drive for their "Hospital Building & Equipment Fund" to be utilised for the proposed construction of hospital. The Trust also agreed to participate in that drive and accordingly undertook sale of donation tickets of the Foundation from door to door for cash. For that purpose, the Trust received donation tickets worth Rs. 3,00,000/- from the

Foundation and during the period between November 15, 1977 and January 14, 1978 managed to sell tickets worth Rs. 1,57,050/- out of which Rs. 1,53,000/- were in 153 currency notes of Rs. 1,000/- each. The above sale was effected through employees of the Trust, its representatives and other persons connected or associated with the trustees, who rendered detailed account of such sales. Receipts in respect of the sales were recorded in the cash book of the Trust as and when received and the same was handed over to the said Foundation. According to the petitioners, no record was kept nor could be kept of the various individuals to whom the donation tickets were actually sold considering the manner in which the transactions took place. Besides, the petitioners aver, the donations were received in cash from the employees, representatives and associates and retained in the form received as the same had to be directly handed over to the Foundation on whose behalf the amounts had been collected.

Consequent upon the promulgation of the High Denomination Bank Notes (Demonetization) Ordinance on January 16, 1978 the Trust delivered a declaration in respect of the 153 currency notes of Rs. 1,000/- each, which they had received by sale of tickets as also the notes on January 19, 1978 to the Bank at its office in Bombay. According to the petitioners the said declaration gave complete particulars of the said currency notes and also specifically stated that the amount had been received by way of donations. By its letter dated 4th December, 1978, the Bank however called for the following further details from the Trust:

(a) Denominational details of the tickets issued for collection of donations, and the tickets actually sold till 14th January, 1978;

(b) Whether high denomination notes were directly received, and if not, when and from whom the same were got exchanges, and also called upon the said Trust -

(c) To produce counter-foils of the tickets for perusal and return;

In response to the said requisitions the Trust furnished a statement giving complete particulars of the tickets sold by it, and produced and counter-foils of the tickets for perusal.

Thereafter by its letter dated August 16, 1979 the Bank intimated the Trust that the declaration filed by the Trust could not be treated as complete in all material particulars for the following reasons;

(a) against column 15 of the said declaration form, it is stated that "the amount received as donations remaining in hand pending utilisation of the same" This seems very unusual since the said trust had a bank account and the cash was not required for being utilised in the very near future and

(b) against column 16 of the declaration, it is stated that "the amount was received from

donors, names not recorded". This was every vague reply and does not establish whether the notes were received before or after the promulgation of the Ordinance. Since the amount was collected that all of them would like to remain anonymous though they had donated for a good cause.

and, accordingly, rejected the Trust's claim for payment of the exchange value of the high denomination bank notes. Against such refusal the Trust preferred an appeal to the Government of India which was rejected by an order dated August 23, 1979. The above two orders are under challenge in these writ petitions.

It was submitted on behalf of the petitioners that considering the manner in which the notes in question were received, the concerned authorities ought to have held that the particulars given by it against Column petitioners further contended that no obligation was cast upon them under the Demonetization Act to furnish complete particulars of

names of all the persons from whom notes had been acquired nor were they obligated to satisfy the Reserve Bank that the notes in question had been received before or after the promulgation of the Ordinance. In all such circumstances, the petitioners urged, the impugned orders were liable to be quashed Under Column 15 of the form of declaration, required to be filed under Section 7 (2) of the Demonetization Act, the reasons for keeping the amount in cash and under Column 16 the sources when and wherefrom the notes came into the possession of the declarant are to be disclosed. Having regard to the provisions of Section 3 and 4 of the Demonetization Act the reasons for disclosure of such details are not far to seek. After the High denomination bank notes ceased to be valid tender on the expiry of January 16, 1978 transfer of the same to the possession of others thereafter was forbidden. That necessarily means, that the right and opportunity of exchanging those notes was available only to those persons who were possessing the same

on January 16, 1978. Therefore, to obtain satisfaction that the declarant was in possession of the notes or before January 16, 1978 the Bank was required to make necessary enquiry and in that context complete disclosure of the particulars referred to in Column 15 and 16 were absolutely necessary. As noticed earlier, in the declaration submitted by the petitioners it was stated against Column Nos. 15 and 16 that "amounts received by donations, remaining on hand pending utilisation of same" and "Donors name not recorded" respectively. The particulars so furnished did not favour with the concerned authorities for according to the authorities, as the Trust had a bank account and the cash was not required to be utilised in the near future it seemed very unusual that it would be kept in hands pending utilisation. As regards the failure of the Trust to disclose the names of the donors, the comment was that this was a vague reply and did not establish whether note were received before or after they had donated for a good cause. The grounds so canvassed in refusing payment to the petitioners

cannot be said to be unreasonable or unjust so as to entitle us to disturb the same. These petitions are, therefore, also liable to be rejected.

On the conclusions as above we dismiss all the writ petitions but without any order as to costs.

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