

India's Fight against Black Money: Silver-Linings and White Lies

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Abstract

The widespread menace of black money has been corroding the social, economical and political fabric of the Indian society by pervading corruption, crime, tax-evasion, exploitation and several other illegalities and immoralities. Despite the varied legislative and administrative measures undertaken so far by the different governments at domestic and global fronts, the problem has never seemed to be subjugating convincingly and perceptibly. On the contrary it has amplified its prevalence, as validated by the scholarly studies and informal divulgements by various agencies across the nation and beyond. The measures undertaken have been experienced to be failing miserably to deliver the goods owing to certain hurdles which drastically thwart the remedy intended. The present study attempts to revisit the core aspects of the black money in the light of significant developments in the recent past which have brought the issue to the forefront. The paper apart from briefly explicating the overall perils attempts to take an overview of the measures undertaken from time to time and discusses in detail the hurdles impeding the fight with the evil of black money. Above all the study underlines the need for ameliorations in measures and more emphatically in the attitude and approach of stakeholders to overcome the hurdles determinately.

Keywords: Black money, Parallel economy, Illicit Financial Flows, Tax evasion, Money laundering and Round tripping

Paper Type: Descriptive

Introduction

The problem of black money has always remained a major threat impeding the economical and social development of India since independence. It prevails in almost every economic activity and generated through perpetration of complex and sophisticated practices designed to leave no trail and circumvent the authorities. Many economists and agencies across the world have ventured to estimate the magnitude of black money in varied manner with divergent outcomes. Though they differed in the methods and results of quantification of black money, commonly they have agreed on the fact that a huge portion of the Indian economy is eclipsed by the black/parallel economy. With steady improvement in economy especially in the post liberalization period, the black economy boosted up with equal pace with its estimation ranging subjectively from moderate 20% to extravagant 60% of GDP or even more by several agencies at different times.

The menace of black money is worldwide; however, it distinctly and severely upsets the social and economical advancement of developing countries like India. Black money not only alienates sizeable

chunk from the exchequer and aggravate economic evils like poverty and inequality but also spawns the social evils like corruption, crime and exploitation. All the governments so far have tried to deal with this problem in their own ways through different measures with debatable achievements ensuring that the issue of black money never loses its currency in press, politics and public.

Background

The commonly and loosely used term 'black money' needs to be understood on the basis of its static and dynamic, both dispositions. The black money may be referred as flow of black money and stock of black money i.e. black money as income and as stored wealth. The measure to deal with the issue of black income and black wealth differ drastically and strategically. To address the issue of black income the authorities need to curb the generation of black income at its source. Whereas to deal with the black wealth stashed within and outside the country the authorities need to undertake measures which will unearth the clandestinely stored wealth by enforcement of law.

Even though the generation of black money is itself illegal activity, the sources of generation of black money may be legal or illegal. The prime sources of generation of black money are crime, corruption and commercial tax evasion. Crime and corruption include illegal activities such as drug/human trafficking, smuggling, extortion, bribery etc. The commercial activities are legal in their own nature but engaging into deceitful and dishonest means to evade fully or partly the legitimate tax liability renders them illegal.

Generation of black money through commercial activities *inter-alia* includes under-reporting of production, manipulation of accounts, and manipulation through associated entities etc. It is common public perception that crime and corruption are major contributories to the generation of black money in India, while in reality and in consonance with the global research, the commercial tax evasion accounts for major share in black money generated, followed by corruption and remaining diminutive share accounts for criminal activities.

Businessmen, politicians, professionals, bureaucrats, celebrities of film, cricket and media even the sacred regions of religion and spirituality; there is no single source of human livelihood which is not stigmatized with the stains of black money for one or more occasions. While responding in the Rajya-Sabha S. K. Gangwar (MoS Finance) informed, that a sectoral analysis of undisclosed income during searches conducted by the Income Tax Department (ITD) in the financial year ended 2016 revealed that the main sectors generating black money are; manufacturing (31%), real estate (29%), trading (8%), educational institutions (7%), contractors (6%), services (5%) and gems & jewellery (4%). The extensive reach of black money only corroborates the high claims of magnitude of black money by different agencies. As a strategic part of management, the black money may be hoarded, reinvested or laundered within the country or may be stashed secretly abroad in safe havens.

The agencies across the world estimating the magnitude of black money stashed in Switzerland and other tax havens have unanimously been forming their consensus in ranking India at the top places; though they differ in their agreement on precise valuation. Over the decades huge amount of black money generated in India has been clandestinely parked in abroad tax havens by unlawful means of *Hawala*, mis-invoicing in trade, services and intangibles, and transfer pricing etc.

Illicit Financial Flows (IFF) - abroad has always remained the major headache for Indian economy since independence, however it aggravated and its acuteness was felt in real sense when the economy was liberated and conventional barriers for worldwide trade were removed under globalization. As the

stringent regulations for transfer of funds were relaxed, money poured in for tapping one of the largest markets in the world and similarly began gushing out with exceeding volume through open and secret channels.

The history of IFF - abroad dates back to World-War II and records struggle and futile attempts to squeeze the whereabouts of the secret bank accounts of tax evaders by England, France and German who had to give in before the ironclad confidentiality of Swiss bankers. Indian history too records quite a few feeble attempts to recover the money; particularly after the huge estimation made public by the formal and informal international sources like Swiss bank, IMF and HSBC espionage. However, in the present decade the issue of black money abroad has sensitized Indian politics and media as never before.

The Indian government seemed reinforced to accelerate the prolonged series of attempts to bring back the black money abroad. The stimulus behind this new founded reinforcement was certain constructive developments at international scene on the issue of IFF-abroad.

In the wake of global slowdown (2008) and their economies in distress the G20 nations' raising resentment on the issue culminated into serious threats of sanctions to tax havens. For the first time in the history the tax havens had to succumb to the mounting international pressure and agreed to share the information. However the agreement has its own limitations in its efficacy in digging-up the past information, as it is full with lots of ifs & buts and legal intricacies.

Nevertheless this development aroused the political optimism in India and bringing back the black money became one of the main electoral agenda in 15th general elections. In anticipation of recuperating the huge amount of booty, the barmecidal speculations for its deployment were bustling in media and politics. The speculations ranged from paying off all the foreign debts overnight and declaring the tax holidays for several years out of surplus left, to depositing the bank accounts of every citizen with lakhs of rupees and what not. The overall credulous optimism was inspired by the illusion that money stashed abroad over the decades was lying in the safe havens unmoved. Whereas in fact with the premonition of adverse developments for their stashed wealth in Switzerland and other European tax havens, the secret account holders gradually had began to move their funds to Mauritius and Singapore, the new tax havens. That accounts for inexplicably huge portion of capital originating from these tiny nations in the form of FDI and FII and explains how the money stashed in tax havens is laundered and brought back to India commonly known as 'round tripping'.

The Economic & Social Perils

The problem of the black money in a developing country like India is complex and it drastically slows down the economical and thereby the social development. The economic perils of black money often pose as both cause & effect for social perils like crime and corruption. However in unison both the factors strongly create a severe threat to the democracy, sovereignty and prosperity of the nation.

Economic Perils

Black money is great deal of funds generated out of productive activities calculatingly evaded from the public exchequer and stashed within or outside the country. The black money not only causes the sizeable loss to the government revenue but also drains a great deal of money out of economic system and severely affects the economic growth and thereby sovereign credit rating due to decline in the GDP rate and other economic indicators. The money remaining unaccounted in the economy is generally diverged towards unproductive deployments like hoarding in currency notes, precious metal & stones,

conspicuous consumption, real estate and secret deposits in foreign tax havens. The anti-economic divergence of huge unaccounted money cause massive leakage in government revenue and hamper the efficient mobilization of resources. Thus the misrouted and unaccounted flow of national resources towards unproductive investments, a huge drain in state revenue and hoarding of money in few private hands create a complexity for state agencies in sizing up demographic and economic information accurately. The economic policies formulated on the basis of such half-baked information tend to be less effective in achieving desired results and emasculate the fight against poverty and inequality. The unequal distribution of income is further worsened by the inflation; yet another miscreant of black money. Black money leads to exploitation of workers as several times it is generated by fraudulently contravening legal obligations such as evading statutory contributions, minimum wages, working hours and safety standards. The black money transactions have significant but adverse impact on real estate prices which are getting beyond the reach of middle class day by day. When the masses are striving hard in making both the ends meet, the class denoting a few percent of well-off and neo-rich find solace in ostentatious and exorbitant shopping & entertainment. When it's harder for a middle class salaried city dweller to catch up with rising prices, one can barely imagine the agony of a daily wage earner and a destitute farmer who are subjected to the exploitation by landlords and lenders. The inadequate and ineffective measures often devised on the basis of poorly researched policies in the midst of inaccurate economic information fail to reach the indigent. The economists believe that India and China are the major beneficiaries of third super-cycle the world is currently passing through which is expected to last till 2030. In 80s at the initiation of the super-cycle though the Indian economy was about the same size that of China, at present the China has way ahead surpassed India in economic development. The prevalence of parallel economy and huge money alienated from the economy and IFF-abroad inter-alia may be the prime culprits.

Social Perils

The parallel economy thrives by deviously circumventing the laws and regulations intended to curb it, quite often in league with the machinery responsible for its implementation and enforcement. The circumvention of laws and regulations in connivance with the public and private agencies in top to bottom collusion is commonplace in almost every economic sphere. These cliques may operate overtly or covertly but usually in organized manner. Authorities, bureaucrats and consultants for crafty-work of bending and breaking the rules, agents & brokers as facilitators, private and public force for oppressing the resisting elements; and all under the patronage of corporate bigwigs and auspices of the corrupt politicians, everything in unison have pervaded the black money culture in India. Corruption and crime are two propellers of black money culture. The corroding democratic values in political system and shift of allegiance by dishonest public servants to parallel economy by indulging in corruption are leading to gross neglect and inefficiencies in public sector and thereby affecting the democratic set up and effective implementation of social and welfare services in the country. The all pervasive corruption is yet another reason for policy failure, as despite being the third largest economy India is still far away from achieving the basic minimum goals of literacy, health and civil amenities. As per the corruption perception index-2016 published by Transparency International, India ranks 79th amongst 176 countries and territories scoring 40 on a scale of 100 which is below the global average of 43. Further a study on the data under the survey asserts that there is strong correlation between corruption and social exclusion and corruption leads to unequal distribution of power and wealth. Besides corruption black money involves committing illegalities and growing criminalization in the society and poses severe concern for the national security as more than often black money is the prime source of finance for anti-state activities.

The Overview of Measures

The different governments undertook several measures to curb the menace of black money. The measures include several official and otherwise VDI Schemes, tax reforms, legislation and institution of appropriate administrative machinery to address the need of times to active participation on the global platform on the issue to the recent drastic move of demonetization.

Voluntary Disclosure of Income Schemes (VDIS)

Since 1951 the government officially declared seven VDIS to unearth and bring back the black wealth into mainstream economy. It is pertinent to note that the effective incidence of tax on jewelry disclosed under the VDIS scheme 1997 was even 0.1% of the value disclosed by craftily exploiting the provisions of the scheme.

The spirit of these schemes was more like state-sponsored-laundering as these schemes were seemed to be more beneficial than punitive to the non tax compliants, as they not only received all sorts of immunity but also ended up paying lesser taxes by declaring the assets at lesser than their real value and getting taxed at normal rates without imposition of any interest and penalty.

The VDIS scheme 1997 and IDS scheme 2016 were the latest and most acclaimed schemes amongst all. Though the two schemes were compared by the experts on scholarly parameters, the comparison was not free from political tint as both the schemes were declared by two different governments when either of them was in the opposition at the time of pronouncement of the scheme. At the time of VDIS 1997 the then UPA government was required to file an affidavit in the Supreme Court pledging that these kinds of amnesty schemes shall never be pronounced again. Therefore while introducing the IDS 2016 the NDA government had to proclaim that it was not just another amnesty scheme and the scheme provided comparatively stringent tax rates along with rigorous imprisonment for willful attempt of tax evasion. The declarations under the IDS 2016 were far lesser than the earlier scheme and again proved that the non tax compliants were not to be taken in by the threats of penal action but will surely respond to the bargain to their advantage.

Other VD Schemes in disguise

Finding the results of the VDIS not encouraging enough, the government adopted inconspicuous means for voluntary disclosures. Instead of pronouncing fresh VDI scheme with the official approval of parliament, in 1985 the VDI scheme was camouflaged in the form of seven CBDT circulars issued from June 1985 to February 1986 allowing the similar amnesty to the non tax compliants. Further Indira Vikas Patra (1986) and Kisan Vikas Patra (1988) provided the ongoing opportunities to the tax evaders to disclose circuitously the unaccounted wealth.

Issue of Bonds & Deposits

With an average interval of a decade the governments kept pronouncing the VDI schemes punctuated with other similar schemes providing not only the similar immunities and amnesties but obliquely also with the opportunities of money laundering without incurring any tax liability. These schemes were in the nature of issuance of bonds and deposits. The results of these schemes too were not up to the expectations and failed to boost up the economy by unearthing black money in it as hoped for.

Taxation Reforms

Reduction in Tax Rates

The higher tax rates have ever been the prime cause of tax evasion and consequent generation of black money at individual and corporate level. The Taxation Inquiry Commissions consistently recommended in their reports from decade to decade, the need for reduction in exorbitant tax rates. The governments had been implementing the reports of the commissions as a systematic effort to reform the taxation by reducing the tax rates and number of slabs gradually.

It is pertinent to note that 97.5% of maximum marginal tax rate for individuals with eleven tax brackets in the early years of 80s decade have been gradually reduced and stabled up-to the three major slabs of 10%, 20% and 30% with further marginal levy of cess and surcharge.

Permanent Account Number (PAN)

The current form and relevant rules of PAN have evolved since 1972 to facilitate linking of various financial documents and transactions of the assessee with assessment procedures, for detecting and combating tax evasion and widening the tax base. The Inefficacy of rule providing for mandatory citation of PAN on financial and banking documents has been mitigated by amending the rules and providing penal action in the form of prosecution and imprisonment for assessee in default.

E-Governance in Tax Administration

The growing thrust on e-governance in tax administration has resulted into expansion of tax ambit with greater efficiency and reforms in tax compliance, In concurrence with the suggestions of Kelkar Committee (2002) for ITD to focus on the areas of core competence and to outsource the non-core activities and setting up an independent Tax Information Network, the ITD conceptualized and introduced a series of innovations and initiatives in tax administration with the help of information technology. These initiatives *inter-alia* include digitization of annual information returns in 2004, e-filing of returns in 2006, establishing during 2006-08 a dedicated countrywide network in the Department, e-payment of taxes and outsourcing issue of refunds for direct credit in bank accounts in 2008, establishing a Centralized Processing Centre in Bengaluru in 2009 for centralized processing of e-filed returns, and establishing a Centralized Processing Centre in Delhi in 2012 for centralized processing of TDS returns. For ensuring compliance with the tax obligations the ITD devised a centralized and rule based mechanism for selecting cases for scrutiny viz. Computer Assisted Scrutiny Selection (CASS). The Integrated Taxpayer Data Management System (ITDMS) electronically collates information collected from various sources of taxation like TDS, e-returns and annual information returns (AIRs) and creates a 360-degree tax profile of high net-worth assesses.

As these initiatives put down the roots the number of e-filed returns reached 4.34 Crore in FY 2015-16. The implementation of Non-filers Monitoring System (NMS) has resulted into 46.7 Lakh non-filers filing their return and paying self-assessment taxes of Rs 6,451 Crore till the FY 2015-16. The percentage of tax collected using electronic payment option has increased from 44.51% in FY 2010-11 to 74.91% during FY 2015-16 in count terms and for the similar period it has increased from 80.24 to 88.49% in value terms. These measures brought down turnaround time for processing of returns to about 60 days.

The overdrive of initiatives was further introduced in the core business processes like assessment, investigation, intelligence, litigation and grievance redressal with the introduction of Income Tax Business Application projects (ITDB) (2014), National Judicial Reference System (NJRS) (2015), Project

Insight and e-NIVARAN. The Refund Banker Scheme has significantly cut down the rampant practice of cheap bribery in the department and CASS has been instrumental in the elimination of discretionary power of the assessing officer to select cases for scrutiny with effect from 2013. The thoughtful, well implemented and sustained drive of e-governance is expected to reduce the arbitrariness and misuse of discretionary powers in tax administration. The expedition of e-governance in last a dozen years has not only fructified and strengthened the ecosystem of the tax administration but also has caused to establish a strong deterrent factor among the tax evaders.

Enactments & Strengthening Legislation With Administrative, Investigative and Intelligence Machinery

As the problem of black money is widespread, pervasive and complex there can possibly be no unique codified law to deal with the menace. The legislation to curb the black money has evolved over the years to confront the turbulences of different sorts at different times. The legislation against the black money is dispersed in various laws providing not only the preventive measures to control, but also civil, criminal and penal actions for generation and laundering of black money. A network of constituent agencies operating within and outside the country under the intertwined legal framework is entrusted to enforce these laws and coordinate with each other in investigations and responsible for exchange of intelligence.

Income Tax Act, 1961 empowers IT authorities subject to the other provisions of the Act for discovery, inspection, survey, search and seizure of assesee in default. The Act provides for the filing income tax return, maintenance of books of accounts, mandatory tax audit and further through provisions of TDS and TCS create legal obligation on person making certain payments to deduct tax from the payment and deposit it with government. The Wealth Tax Act, 1957 also provides for various provisions which are similar to that of Income Tax Act, 1961.

To avoid undesirable divulgence, black money is usually invested in buying benami properties with fictitious credentials so as to deceive the authorities in tracking down the real owner of the property. To curb this practice Benami Transactions (Prohibition) Act was passed in 1988, which was drastically amended in 2016 to broadly cover all the aspects of the benami transactions. Prevention of Money Laundering Act (PMLA), 2002 deals with prevention of money-laundering, confiscation of relevant property and allied matters, further the Act provides for restitution of black money, seizure, attachment and confiscation of asset stashed abroad.

The Customs law provides penalty for improper import and export of goods and for short levy or non levy of duty, the penalty equivalent to the value of the offended goods can be imposed under the Act. Further the offences under the Customs Act, 1962 and the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 are 'Predicate Offences' under the PML Act, 2002 hence the tainted proceeds acquired by contravening the provisions of these Acts can be attached and confiscated under the PML Act, 2002.

Central Board of Direct Taxes (CBDT) is responsible for administration of direct tax laws and assists Central Government in all policy matters relating to international taxation, transfer pricing and direct taxation in India. Under the CBDT machinery information gathered is investigated for tax evasion by carrying out operations such as survey and search to collect evidence for evasion. Central Board of Excise and Customs (CBEC) is responsible for levy and collection of customs & central excise duties, prevention of smuggling, and administrative matters relating to customs, central excise and narcotics to the extent under the CBEC's purview. Central Bureau of Narcotics (CBN) counter measures against illicit drugs traffic under various international conventions and protocols, and also assists concerned authorities in

foreign countries and international organizations dealing with prevention and suppression of this prohibited traffic.

Enforcement Directorate (ED) is responsible for investigation and prosecution of money-laundering offences under PMLA and, under FEMA for counteracting contraventions relating to foreign exchange transactions and international Hawala transactions while under PMLA powers relating to collection and dissemination of information are exercised by Financial Intelligence Unit (FIU-IND) which is responsible for receiving, processing, analyzing, and disseminating information relating to suspected financial transactions.

Central Economic Intelligence Bureau (CEIB) is the nodal agency responsible for coordinating and sharing economic intelligence and investigation with all the intelligence and law enforcement agencies at regional and national level. It coordinates drug trafficking, smuggling, foreign exchange violations, supply of counterfeit currency, Hawala transactions, financial frauds in stock markets, money laundering, tax evasion etc.

Serious Frauds Investigating Office (SFIO) is a multi-disciplinary organization for detecting and prosecuting or recommending for prosecution white-collar crimes or frauds and complex cases having inter-departmental and multidisciplinary ramifications and substantial involvement of public interest.

ROC and **ROS** respectively being registrars of companies and nonprofit societies are responsible for monitoring the compliance of the statutory requirements by the entities registered under them. **RBI, SEBI, FMC, IRDA, TRAI**, etc., regulatory agencies also keep close eye on their constituent entities for out of ordinary transaction.

Special Investigation Team (SIT) on Black Money

The inter-disciplinary high level committee under the headship of Justice Shah was constituted in 2014 as per the orders of Supreme Court in 2011. The SIT has been charged with the responsibility and duties of investigation, initiation of proceedings and prosecution in cases for unaccounted money with its jurisdiction extending in the cases where investigations have already commenced or are pending or awaiting to be initiated or have been completed.

Diplomatic Initiatives for Black Money Stashed Abroad

Financial crisis in 2008 hit across the world and underlined the need for internationally coordinated efforts for strong and decisive action against safe tax havens. The international deliberations insisted singling out and imposing sanctions against these safe havens and constraining them for transparency and exchange of information. India joined this global crusade against black money and played a vital role by strongly advocating for sharing past banking information and raising the issue of automatic exchange of tax information on global platform through G20 and Organization for Economic Co-operation and Development (OECD). India has been instrumental in changing the laws and administrative procedures of jurisdictions in order to conform to international standards.

In September 2015 with the worldwide mounting pressure the Swiss government agreed on amending the Tax Administrative Assistance Act. Leading to this development, though Swiss government had agreed to share the details of tax evaders, it was of little use for India as the amendment had the limitation of applicability period due to Double Taxation Agreement entered into between India and Switzerland in 2011, which meant Switzerland shall be obliged to provide information for fiscal years which start on or after 1 April 2011 that too if the secret bank accounts were still in operation.

Nevertheless the persistent efforts by India showed positive signs as the figures confirmed by the Swiss National Bank suggested that the deposits in Swiss banks by Indians halved by 2016.

In 2016 India amended DTAA (double taxation avoidance agreement) with Mauritius, Cyprus and Singapore. The amended treaties is seen as a major step towards plugging the loophole facilitating the round tripping of funds, as the agreements before the amendment were misused for bringing stashed money back in the country through these routes.

The government in April 2016 constituted Multi-Agency Group (MAG) consisting of (CBDT), (ED), (FIU) and RBI for co ordinate and speedy investigation in the cases of about 500 Indian persons allegedly having undisclosed foreign assets and whose names are reportedly included in Panama Papers leaks.

Demonetization of High Currency Notes

To fight against the menace of black money the weapon of demonetization had been unleashed twice in the history of independent India. In 1978 January the government demonetized the high denomination currency notes of Rs. 1000, Rs. 5000 and Rs. 10000 constituting about less than 2% of total currency notes in circulation. In November 2016 government demonetized the currency notes of Rs. 500 and Rs. 1000 constituting about 86% of the currency notes in circulation. In 1978, the share of abandoned high denomination currency notes in total currency in circulation and thereby overall impact was too inconsequential as compared to the demonetization in 2016. The prime objective behind the unexpected and unwarned move in 2016 was to catch the black money stashers off the guard and compel them to come clean of untaxed cash money possessed by them either in exchange with new currency notes or by depositing the same in their bank accounts.

Introducing Jan-dhan accounts, linking the Adhar card with bank accounts and finally the IDS-2016 was a premeditated ploy devised by the government for the success of the scheme. However as far as the success of the demonetization is gauged on the scale of unearthing the black money, the results were not encouraging. Though the move was initially pronounced against black money, later on the government tried to redeem the success of demonetization by claiming it as a battle against fake currency, funding for terrorism and an initiative towards cashless economy. The scheme was severely criticized by the eminent scholars as it led to slump in economy, upheaval and loss of jobs in the unorganized sector, the huge cost of remonetization, the great public ordeal and incomprehensible move of introducing Rs. 2000 notes by cancelling Rs. 500 & 1000 notes.

Promotion of Cashless Economy

The transaction made in cash facilitates the tax evasion and generation of black money as it does not leave any audit trail. In India a major segment of the economy comprise informal sector which primarily deal in cash either out of lack of knowledge and awareness, or out of inadequacy of requisite infrastructure for cashless transactions. Therefore the efforts to regulate and control the cash transactions were confined to certain provisions in the Income Tax Act disallowing the cash payments exceeding specified amount. Though the use of debit/credit cards and e-wallets has been gradually gaining grounds in metros and cities, the larger section of the society is devoid of these facilities, further the transaction cost involved in their usage dampen the enthusiasm of thrifty customers to use it unreservedly. In such un-conducive set-up the government never seemed keen enough to promote cashless economy wholeheartedly, till the move of demonetization in 2016 which to a certain extent was the stepping-stone of vibrant promotion of cashless economy.

Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015

Taking into account the inadequacy of Income Tax Act 1961, to deal with undisclosed foreign income, a distinct and comprehensive law was enacted in May 2016, providing separate taxation of black money stashed abroad in the form of undisclosed income or asset including financial interest in any entity located outside India. The Act applies to all persons resident in India and provides tax rate at flat 30% without any deduction or set off of any carried forward losses which are otherwise admissible under Income Tax Act, if the undisclosed income has remained unexplained or the explanation offered is not to the satisfaction of the authorities. The violation of the provisions of the Act attracts stringent penalties for non disclosure of income and failure to furnish the return in respect of foreign income or assets.

Goods & Services Tax

The long awaited GST, delayed due to political intricacies, finally came into operation from July 2017. GST is considered as a huge fiscal reform in Indian economy particularly in indirect taxation. Prior to GST multiple indirect taxes were administered by different authorities with no mechanism devised in particular to check unreported transactions and thereby generating a great deal of black money out of unreported income.

Under GST each supply of goods and services will be liable for tax at its source of origination and for every subsequent supply too, however to remove cascading effect of indirect taxes on subsequent supply, every subsequent reseller or manufacturer will be able to claim the credit of taxes paid on preceding supplies subject to the other provisions of the Act. To claim the tax credit it is mandatory and moreover prudent for a dealer to get registered under the GST Act.

The system not only encourages the disclosure of transactions but also well-equipped and integrated with several fiscal databases such as imports, exports, RBI, banks and income tax which may prove to be deterrent factor to the tax evaders. Thus, if administered and implemented properly, the overall mechanism of GST is designed to plug the certain loopholes in commercial tax evasion and thereby curb the black money to a greater extent.

Hurdles

The measures to curb black money are obstructed by several hurdles that drastically impair the remedy expected. To derive significant and effective outcome out of these measures the overcoming of such hurdles is necessary.

Major Prevalence of Informal Sector & Developing State of Economy

Dominance of informal sector entails certain inherent infirmities such as the larger portion of economy mainly operating in cash component, infrastructural inadequacies with low level of education & awareness reducing penetration of banking, lack of good governance with proper enforcement and higher levels of controls leading to significantly higher effective taxes in a large discretionary framework of regulations. Such a socio-economic set-up in developing countries is highly vulnerable for major prevalence of black economy. Whereas far better Cash-GDP and Tax-GDP ratios in developed countries indicate improved penetration of banking facilities and sizeable revenue mobilization through taxes; unlike developing countries. Further high level of education & awareness and low level of controls tend to have better enforcement of laws and balanced regulatory burden in developed countries comparatively expose them to less susceptible for black economy evils.

Inadequacies in Direct Taxation Laws & Administration

The share of direct taxes in exchequer is too meager and as a result the Tax-GDP ratio does not indicate the sign of healthy economy. In India out of about 300 million PAN card holders merely 28.2 million people file their income tax return (August 2017) that too with a good many under-reporting their real income leads to generation of huge black money by tax evasion. Submitting false tax returns, non-reporting of income, inaccurate financial statements, using fake documents to claim exemption, and bribery etc. are the widespread practices for tax evasion/avoidance. The artful exploitation of taxation laws by craftily exploiting the form of HUF, recording dubious transactions such as intra-family gifts and settlements and manipulating the accounts to conceal business & professional income by CAs and tax practitioners in league with corrupt authorities who often mis-exercise their discretion, obscure the thin line between the tax-planning and tax-evasion. Such a fraudulent coalition calls for overhauling in the administrative machinery and vital reforms in taxation laws.

The income from agricultural and allied activities including fishing and bee keeping is kept outside the direct incidence of tax and it's a political taboo to bring it under the ambit of taxation. It is a rampant practice by established and influential class to camouflage unaccounted wealth from unrevealed sources by accounting it under agriculture income. Widening the tax base by inclusion of just and proper agricultural income under the tax ambit is the need of hour.

Opaque Political Funding & Immunity to Corporate Czars

In democracy, admittedly the political parties do need money and have legitimate right to raise funds to pursue and promote their ideology and political agenda. Yet the bitter fact cannot be ruled out that lack of transparency and ineffective regulation for political funding and electoral spending has ever been demeaning the spirit of Indian democratic set up. None of the governments no matter what political ideology it belong has ever dared to undertake decisive and concrete measures to regulate the dubious give and take relationship between the corporate and political parties. Unfortunately it is common perception that pre-election funding ensures the enormous recovery in post-election regime; even though the corporate are not accountable to people, they are in position to influence the political-economic decisions in their advantage. It is preposterous to assume that the politicians in power, who receive so-called anonymous and enormous funds, will ever dispose to take decisive action against their donors who have financed them to contest the elections, which unfortunately over the period have turned from the festival of democracy into hideous political extravaganza. As per the Association for Democratic Reforms (ADR) analysis (May 2014) the chances of winning the election by a multi-millionaire candidate was 20% while that for a low asset candidate was two percent. The interesting fact as per the analysis is 82% of elected MPs in general elections 2014 were multi-millionaires. Despite the official limit for campaigning in parliamentary constituency is around Rs. 70 lakh, the crores of rupees are flagrantly spent on campaigning and alluring indigent voters by buying off their dignity. The apprehension expressed by then RBI governor Raghuram Rajan during 2016 state elections for abnormally massive surge in cash circulation (Rs. 60000 Crore) is quite pertinent and alarming. The source of such enormous spending and abnormal surge in cash circulation is believed to be out of unaccounted money from anonymous sources.

The impediment in fight with black money also arises from this anonymous, enormous and obnoxious give and take. Once entangled in this opportunistic expediency, the ideological will to reform and regulate the political-corporate *quid pro quo* keep on diminishing and eventually turn into mere philosophy. And here

the polity embarks on a vicious cycle, for the reason that the battle between the rulers and the opposition for sustenance and recoup is astutely powered by the tycoons with great business acumen who are pragmatic enough to maintain and shift their allegiance and thereby their dominion in the government, no matter which set of the politicians step up and down the power.

Transparency is one of the basic premise on which democracy operates hence opacity in political funding and electoral spending miserably frustrate people's confidence in state and its policies against black money. Cash donations, sale of coupons, electoral trusts, the inappropriate amendment of Foreign Contribution (Regulation) Act, and the latest electoral bonds schemed to hide contributors' whereabouts are *inter-alia* factors which add to the opacity of the political funding and electoral spending. The government in March 2017 lifted the ceiling on maximum donation by a corporate in a year to political parties which earlier was 7.5% of average net profit of three preceding fiscal years, further the companies are now allowed to make such donations anonymously to any political party they approve. It is apparent that the anonymity as to amount and beneficiary shall be maintained in the public eye; however, such donations will certainly strengthen the give and take relationship between the corporate and political parties who know each other too well.

Political Expediency over Systematic Compliance & Administrative Obstacles

The accusations are reciprocated more than often by the opposition who has ceased to exist in power that the incumbent government is revengefully misusing the administrative agencies like CBI, ED and ITD for settling scores by imposing the false and baseless investigations. Even if for the sake of discussion we assume that there is no iota of truth in the accusations of either side, the fact remains that the agencies are maneuvered by the ruling parties for furthering their own agenda. Moreover there is an ample scope for the likelihood that if the agencies can be misused against opposition, those can be equally engineered in the advantage of ruling parties for weakening the allegations leveled against their supporters which might be full with substance and material. The Indian politics has flagrantly witnessed the incidences how leaders and supporters of opposition are startled by raids, confiscations and arrests whereas the supporters of the ruling parties who are under-trials either get clean chit, acquittal or bail which was otherwise out of question. The media has been reporting the public statements of the heads of the governments warning the upper echelons of the opposition that the government is in hold of their entire horoscope and they better off quiet and hold their tongues. Thus the agencies are not free from the political influence, the lack of complete autonomy and confined powers of decision making force them to function at the behest of the government. Action or quite often inaction by pliable corrupt officers is usually driven by the political expediency of rulers than systematic compliance. The independence and credibility of the agencies is stigmatized by the common practice of carrots for political protégé and sticks for administrators working with integrity and acting against the interests of ideological or financial supporters of the ruling alliance.

The Intricacy and rigidity of working procedures along with intertwined and complex distribution of power and authorities among various agencies create bottlenecks in the independent investigation by the agency. Further the administrative impediments such as under-staffing, infrastructural inadequacies and insufficient financial resources affect the smooth and effective functioning of the agencies.

Delayed, Dithered & Diluted Legislation

To curb and deter the corrupt practices and ensure transparency and accountability in public administration a series of bills were tabled in previous parliament, however due to certain legislative

logjams and finally with the dissolution of 15th *Lok-Sabha* the bills eventually lapsed and still await enactments. The bills include the much looked forward Public Procurement Bill, Prevention of Bribery of Foreign Public Officials Bill, Judicial Standards and Accountability Bill, Lokpal and Lokayukta Bill and Citizens' Grievance Redressal Bill. Though these bills are proposed to be tabled with few amendments, the activists and experts sense that certain untoward amendments are proposing dilution in the spirit of the bill and are detrimental to the public interest. The proposed amendments in the certain Acts like Right to Information and Protection to whistleblowers in the opinion of activists are likely to dissuade any public-spirited person from tipping off or attempting to divulge corruption in the government or bureaucracy.

Inefficacy of Foreign Treaties in Recovering IFF-Abroad

The business model of safe tax haven devised by certain foreign jurisdictions to allure the tax evaders is a big hurdle in fight with black money. Some economists even believe that it had been the conspiracy of the western world to pilfer scares capital from developing countries to rich countries. The coordinated efforts under the OECD bore the fruits of Multilateral Competent Authority Agreement (MCAA) and Automatic Exchange of Information (AEOI) and these treaties are expected to curb flow of black money abroad in the near future. It is claimed that a major portion of black money parked abroad is stashed in Swiss banks. In pursuant to amended DTAA (2011) with Switzerland only the information post 2011 bank accounts can be shared on official request by Indian government and that too subject to the position taken by the Swiss courts in the matter. India has ratified the AEOI with Switzerland in June 2016 however the agreement is fraught with loopholes and viewed as of limited efficacy as far as bringing back the black money is concerned. As per the terms of agreement it comes into force from 2018 and is not under obligation to disclose to the Indian authorities any transactions before 2018. Thus the agreement affords ample time to the black money hoarders to come up with escape plan and shift the money to other safe haven which is outside the purview of agreement.

Nevertheless the developments ensure the preventive and deterrent multilateral legal framework at a global scale to check the menace of IFF-abroad in near future. The political attention needs to be shifted from IFF-abroad and to zero in on black money generated within the country and curbing its outflow. In a high level meeting (October 2015) addressing senior government officials the vice-chairman of Special Investigation Team (SIT) Justice Pasayat, stated that the volume of black money stashed in India is much more than the volume then in the foreign countries. The statement from the second in command of the SIT investigating black money is indicative enough for the government and administrative machinery to take the sign.

Round Tripping

Round Tripping is the homecoming of IFF-abroad from tax havens in freshly laundered forms of FDI, PNs and GDRs by obscuring the ownership of real beneficial investor. As per a research by KS Rao and Dhar (2011), almost 70% of inflows were through tax havens and at best half of the total inflows could be considered as genuine FDI. The figures demystify the puzzle how come biggest source of FDIs are tiny tax havens. As per the report (2015) of Special Investigation Team ((SIT) on Black money, the Caymans Island has population of around 57,000, but 92,000 companies and have investment worth Rs. 85,000 crores in India through Participatory Notes (PN). The format of PN ensures that with unrevealed identity and officially dodging the KYC norms, any foreign investor can legally route unaccounted wealth in Indian securities anonymously. Any proposition or action by SEBI for tightening disclosure norms results into

outflow of FII and consequent fall in the market, which is self-explanatory for highlighting the hidden interests behind the strategy of investments through P-Notes. Further several entities are reported to be under the scanner of SEBI which alleged to have been involved in fraudulent activities in issuance and redemption of GDRs and raising funds without involving the real beneficial investor. The dilemma is whether to take stringent action against these round tripping channels, or, coddle the sentiments of market and investors; India need to overcome this ambivalence with decisive and deliberative action.

Need of the hour

Drastic Reforms & Regulations & Stringent Enforcement

India has diverse provisions in dispersed laws to cover every aspect related with curbing the menace of black money. Unfortunately, having strong legislation does not necessarily mean having desired result unless there is strong enforcement. In the absence of requisite expertise with latest know-how the resourceful perpetrators are able to outsmart the administrative machinery already struggling with limitations such as understaffing, and undue political interference.

As per a study (in 2008) made on the basis of survey and search cases in Mumbai, the region collecting major share of income tax in whole country, it was estimated that none of the taxpayers concerned declared anything more than 25% of their true income after 1999. Despite making the fair allowances for obsolescence of the study, the fact cannot be denied that the tax evasion is rampant in the country. In a rapidly emerging economy like India 16.6% Tax-GDP ratio as per Eco-survey 2016 is far below compared with the average of emerging economies i.e. 21.4%; moreover in a country of 1.3 billion merely 28.2 million filing their income tax return is a real challenge for the legislators and administrators. The strong need is felt in overhauling the administrative machinery and equipping it for stringent enforcement of legislation.

The recent drive of linking Aadhar card with PAN and Bank Accounts is a major initiative to keep check on evasive financial transactions and keep them on ITD radar. The initiative can be fortified with the strong networking and data collection and collation by ITD with property registrar offices, stock exchanges and Central KYC registry.

The huge difference in acquisition and registration value creates ample scope for tax evasion and generation and laundering of black money in real estate sector. Cash dealings and anomalies in circle rates are the major loopholes which need to be plugged by stringent regulations.

The fraudulent practices such as manipulation in accounting, facilitating accommodation entries, and arranging for bogus/inflated invoices & certificates etc., are common among corrupt Chartered Accountants. The unofficial settlement of tax matters by CAs and Tax practitioners in league with Corrupt ITOs is also a common practice.

Providing reliable and transparent financial information in public & private sector, and safeguarding the interest of revenue, are respectively the essential services required to be provided by the CAs and ITOs to the nation. In unison they have capability and competence to weed out corrupt practices if they introspect and rise above the inequities and immoralities they are required to indulge into as a hideously conventional part of occupation. The legislation that would strongly deter the compromising integrity of the consultants and authorities need to be in action under the supreme control of the institution of the Ombudsmen. The delayed bills such as Lokpal, Whistleblowers Protection and Citizens' Grievance Redressal need to be legislated on priority with effective and deterrent provisions.

Signing the MCCA agreement, ratification of automatic exchange of financial account information by Switzerland and amendment of DTAA with Mauritius, Cyprus and Singapore are the crucial developments in dealing with the menace of IFF-abroad. India has categorically exhibited active participation on the platform of G20 and OECD in global fight against black money, however India further needs to intensify its efforts and tighten up the loose ends in IFF-abroad and Round tripping. FDI, Participatory notes through FII and GDR are the channels of round tripping through which the money stashed abroad is laundered and flown back to India. SEBI needs to be empowered in tightening the KYC norms for squeezing the whereabouts of beneficial owners out of foreign institutions investing in India through different channels.

The political and bureaucratic connections in Hawala dealings have come to light in the past and the instances of Hawala transfers continue to hit the media every now and then. This clandestine channel of money transfer eats into considerable amount of state revenue. However inadequate regulations and mild civil penal provisions under the FEMA miserably fail to create a strong deterrence.

The international transaction between associated entities renders a perfect guise for tax avoidance through transfer pricing. Lack of qualitative screening of transactions before picking them up for scrutiny renders India with the most litigious country in transfer pricing worldwide. ITD needs to be more objective and qualitative rather than picking up the transactions based on certain threshold.

As per the recommendations of Global Financial Integrity (GFI) in its seventh report (2017) governments should significantly boost their customs enforcement by equipping and training officers to better detect intentional mis-invoicing of trade transactions, particularly through access to real-time world market pricing information at a detailed commodity level.

GFI has further asserted the need for requiring MNCs for public disclosure of financial, associated entities related and staff levels information on a country by country basis. The parent MNCs are required to report such information to tax authorities of the home country, however the home country is not obliged to share such information in the absence of official treaty with the other country. The countries should require companies over which they have relevant jurisdiction to provide public country-by-country reporting, in order that the authorities shall be well-informed to deal with the problem of profit-shifting, further the publicly available country-by-country reporting would also allow experts from academia, civil society, and the media to lend their analytical support to the problem.

The NGOs, trusts, and shell companies are often floated by the entities which function behind the corporate veil and launder the unaccounted money. The registration of verified beneficial owners of such entities in the public registry and maintenance of record of their whereabouts with all the banks and financial institutions they are dealing with should be formalized. The initiative of Central KYC registry is expedient in this regard and it is encouraging to note that the government is planning to make Aadhaar compulsory for regulatory filings made by key managerial personnel and directors under the Companies Act, in its attempt to weed out bogus entities.

Soul-Searching by Business Community

An acute scarcity of essential commodities during the wartime in 40s was taken in their stride as a blessing in disguise by the business community who discovered the novel but wicked means of making easy money out of hoarding and black marketing. Such a strategy and sentiment formed on dishonest premise was further intensified in the post independence regime flustered with license raj, red tapism, and exorbitant tax rates, when the means to make easy money were further extended by resorting to

avoidance/evasion of taxes rather than extension, expansion, and diversification of business activities. The post LPG reforms substantially reduced the complexities in obtaining approvals & licenses and offered ample opportunities with simplification, reduction and incentive-based exemptions in taxation. Unfortunately the opportunities of redemption and sanctifying the business operations were not appreciated by the business community at large; moreover the relaxed business environment which opened the avenues worldwide was exploited for generating and stashing black money within and outside the country.

The wave of reforms to render business-conducive environment is continued with infrastructural development and digital revolution with further simplification in indirect taxation with the recent introduction of GST. The due gestation time shall eventually remove the bottlenecks in the new system and afford the business community to adjust and settle in the transition phase of business environment. However, it is time for the business community for a little introspection and to rise above the tax evasive culture and perform their vital part in nation building.

Political Will

The ongoing series of scams such as 2G spectrum, Common Wealth Games and Coal-gate culminated the people sentiment into the changeover of government. Cashing in on it rightfully the present government came to power by highly publicizing the issue of black money stashed abroad with the promise to bring it home within stipulated period and flooding the bank account of each citizen with the repatriated proceeds, though later on the promise was passed off as being just an electoral slogan. Since the facts and figures by the researchers claim that the money stashed abroad does not lay idle in tax havens but tactically deployed for round tripping and laundered through other means. It is time to focus attention on curbing the generation of black money within country while keeping a close eye on money leaving the country and trying to get the best out of recent developments of MCAA and AEOE etc.

The government through credible initiatives such as Direct Benefit Transfer (DBT), Financial Inclusion, Demonetization, and Cashless economy has held its intentions out to curb black money. The recent post-demonetization drive of search and seizure across the nation and unearthing numerous shell companies is commendable venture by the administrative machinery. However the menace of black money is deep rooted in the socio-economical and political ecosystem and this superficial wiping though commendable, certainly not enough for cleansing the overall system from inside out. The intentions need to be backed by the tough and self-sacrificing decisions; decisions by strong and impartial actions; and actions by tangible and quantifiable results. Can government tread this altruistic and arduous path to transform intentions into results?

A few more questions are pertinent in this respect. Can agricultural income be judiciously brought under the tax ambit? Can Procurement, Lokpal, Whistleblowers Protection, Citizens' Grievance Redressal and other delayed bills be legislated with people-centric spirit? Can RTI be extended to political parties for bringing transparency in political funding? Will administrative and investigative machineries be granted free reign to operate in independent, objective and impartial manner?

The answers to these questions further depend on the honest answer to one more crucial question, where our politicians pledge their efforts and commitment in, their own self and party or people of the nation?

The Indian polity over the years has exhibited the inter-party contest of conquest of power and struggle to maintain it by fair and foul means, at times even abdicating the democratic principles of transparency

and accountability in order to accommodate their individual and party interests at center stage by setting aside state welfare.

Strangely but certainly not inexplicably, this inter-party contest at times has even been bewildering the people with underhanded and opportunistic unanimity which has been observed among the leading political parties on several issues. Opposing the recommendations of Parliamentary Standing Committee suggesting enactment ensuring self-sufficiency, credibility and impartiality in the functioning of investigative agencies; blatantly violating **FCRA** in receiving foreign contributions as decided by High Court and further upheld by Supreme court; and strongly opposing the inclusion of political parties under RTI overruling the Central Information Commissions decision are few of the illustrative issues worth noting.

The probable answers to the above questions and pathetic consensus on above issues ingeniously convey the general political will and likelihood of politicians to bite the bullet and take tough and concrete decisions. The manifestation of political will and its discernible impact on corporate governance of bigwigs are great contributories in conditioning the integrity of the business community by and large; hence taking the cue from their political and corporate leaders the possibility of soul-searching by the business community is also equally likely.

Rising above the hackneyed and perfunctory political rhetoric and uniting with the people for a nationwide crusade by all the politicians across the party line by setting aside self and assuming phoenixlike austerity to exorcise the black money evil from Indian society is real need of the hour; howsoever fanciful it may seem at present.

Conclusion

The menace of black money has hampered the overall development and caused social, economical, political and moral corrosion to a considerable extent in India. The insatiable greed of deceitful businessmen, corrupt politicians and voracious bureaucrats has ensured top places to the nation in the estimation of black money by several studies, reports and espionage which have unanimously established the enormity of this evil; though with diverse outcomes. Crime, corruption and predominantly commercial tax evasion are the main sources generating and pervading the evil of black money. India's fight with this menace within and outside the state has never been a great success story though the recent global developments are encouraging. Major prevalence of informal sector, underhand pact between politicians and corporate, undue government interference in administrative and investigative machinery and political dithering for strong and austere legislation are main hurdles emasculating the fight with black money. The strong legislation and its deterrent enforcement, empowerment and functional autonomy to administrative machinery, and removal of the opacity in political funding and electoral spending by rising above the political-corporate quid pro quo, are the requisites for effectively curbing the menace of black money. The introspection by the business community and administrators resulting out of transparent and healthy socio-economical and political environment created through tough and austere measures assumed out of strong political will are the keys to curb the menace of black money to a greater extent.

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