

## INDIAN CORPORATE TAX EVASION: AN ANALYSIS OF THE LEGISLATIVE FRAMEWORK

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*"In 1790, the nation which had fought a revolution against taxation without representation discovered that some of its citizens weren't much happier about taxation with representation."*

*(Lyndon B. Johnson<sup>1</sup>)*

*Rooting for taxes has never been an easy task as almost the entire population on this planet questions the concept of giving away a part of their earnings to the government. Nevertheless, one cannot deny the fact that the collection of taxes is an important source of income of the government. With the country facing a lot of problems for instance generation of black money due to corporations committing tax frauds, the author attempts to deal with the varied legislative framework adopted by the government and tax authorities to audit the undisclosed transactions to limit the menace of corporate tax evasion in a developing country like India. The research paper scrutinizes the limitations and issues allied with the steps taken by the legislative wing to curtail this issue. The author concludes the research paper by attempting to understand the shortcomings that lead corporates to take destructive measures on developing nations to indulge in tax evasion.*

**Keywords:** Corporations, Tax, Fraud, Government, Black Money.

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### INTRODUCTION

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<sup>1</sup>Lyndon B. Johnson was a politician and was elected as vice president. he served as the 36th president of the united states of America from the time period of 1963 to 1969. This was after John F. Kennedys assignation.

In the Indian contemporary years, the apprehension over the subject matter of corruption, corporate tax frauds and black money stashed abroad in tax havens<sup>2</sup> that has come to its pole position after a series of corporate monetary scandals and has dominated debates and discussions in the public forum. The Supreme Court, Members of the Indian Parliament and the people at large has explicitly articulated their fear on issues like tax evasion, subsequent to a few reports indicating huge evaluations of such offshore unaccounted money. Following this chaos, the Indian Government introduced a White Paper on Black Money in 2012<sup>3</sup> where in, the varied facades of black money along with its complicated association with the policy and the country's administrative functioning was articulated. The campaign against corporate tax evasion seems to rise with each transient year and expressions like 'financial sorcery' are used by a variety of business companies for avoiding the payment of taxes.<sup>4</sup> Although the corporate tax evasion has been extensively documented, minute or no concrete measures have been adopted by the national or international bodies to control and restrain the mounting corporate tax frauds.

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## LEGAL ANALYSIS

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### **Income Tax Act, 1961**

Under Income Tax Act, 1961, *section 271(1) (C)* state the penalty for non- disclosure of the specifics of the proceeds or furnishing of erroneous details of the earnings.<sup>5</sup> Section 37 states that the expenditures that has incurred for the purpose of profession and business exclusively shall be acceptable in computing the income chargeable under "Profit and Gains of Business or Profession." However, mere claim of the expenditure cannot be briefly considered as concealment or inaccurate particulars of the income.<sup>6</sup>

*Section 271 A* refers to failure to keep or maintain books of account as required under section 44 AA of the income tax act for which the penalty levied is Rs. 25000, *section 271 C* refers to the disappointment to withhold tax at source for which the penalty imposed is the amount equal to tax which he failed to deduct or pay, *section 271 F* talks about the

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<sup>2</sup>Tax havens, also known as 'secrecy jurisdictions' or 'offshore' is a jurisdiction or a country or even an independent area where taxes are levied at a low rate.

<sup>3</sup>*Black Money White Paper*, CBDT, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, (May 2012) [http://www.finmin.nic.in/reports/WhitePaper\\_BackMoney2012.pdf](http://www.finmin.nic.in/reports/WhitePaper_BackMoney2012.pdf) (last visited on Aug. 8, 2017).

<sup>4</sup>*The Tax Offices Transparency Reporting is Looking a Little Opaque*, THE CONVERSATION (Dec. 13, 2016, 06.00 AM) <https://theconversation.com/the-tax-offices-transparency-reporting-is-looking-a-little-opaque-70200> (last visited Aug.8, 2017).

<sup>5</sup>The penalty for concealment of the particulars of the income is not meagre to the amount of tax required to be evaded and not exceeding 3 times the value of tax sought to be evaded.

<sup>6</sup>*Shivram Transport Finance Co. v. Department of Income Tax*

failure to furnish return of income under *section 139 (1)* that is persons owning immovable property, motor vehicles, telephone etc. for which the penalty prescribed under the act is Rs. 5000, under *section 272 B* the penalty prescribed for failing to apply for allotment of permanent account number (PAN) is 10000.<sup>7</sup> Income tax act contains provisions under which prosecution proceedings can be started for different offences committed by the taxpayers such as *Section 276 B*<sup>8</sup>, *276 C (2)*<sup>9</sup>, *276 CC*<sup>10</sup>, *277*<sup>11</sup>.

However, *section 273 A* of the act authorizes the income tax officers to decrease or waive penalties for tax evasion it is willingly unveiled before being exposed by the Assessing Officer. However, this can be done only once in the tax payer lifetime. Practically, it is likely that the penalty is waived numerous times for the same tax payer even when the disclosure benchmark is not met. The prospect of misuse of *section 273 A* cannot be ruled out. *Section 273 A (4)* of the act allows tax officers to reduce or waive penalty due to genuine hardships. Additionally, under *279(2)* of act, tax officers are given the power to compound a crime either prior or after the initiation of the proceedings. These powers being discretionary cannot be challenged in a court of law.

The use of Information technology in tax administration has been growing in a huge extent. Tax E- payment and E- filing of returns is an effortless and prominent facility provided to the tax payers in order to make income tax payment through internet banking or by use of debit/ credit cards. Assessors were necessitated to get the accounts audited under *section 44 AB* and all companies are mandatorily required to make E- Tax payment. While electronically filing of returns through internet is obligatory for a company and a firm liable to audit under *section 44 AB* while it is optional for other assessors. Similarly, it is a requisite for the corporate deductors, to furnish their TDS return in an electronic form. The second method used in tax administration is the Digital signature. It is an electronic signature for

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<sup>7</sup>CIT vs. DHTC Logistics Ltd (Delhi High Court)

<sup>8</sup>Failure to deposit tax collected and deducted at source for which punishment prescribed under the act is rigorous imprisonment up to 7 years (not less than 3 months) and fine.

<sup>9</sup>Wilful effort to evade the payment of a tax penalty or an interest for which the punishment prescribed under the act is rigorous imprisonment up to 2 years (not less than 3 months) and fine.

<sup>10</sup>Wilful failure to produce income tax returns in time or return of the fringe profits for which the punishment prescribed is a) rigorous imprisonment up to 7 years (not less than 3 months) along with fine if the amount decided to be evaded exceeds Rs. 25, 00,000 (b) Imprisonment up to 2 years (not less than 3 months) and fine in other cases.

<sup>11</sup>Making a false statement in verification or delivering a false account for which the punishment prescribed is (a) Rigorous imprisonment up to 7 years (not less than 6 months) and fine if the amount necessitated to be evaded exceeds Rs. 25, 00, 000. (b) Rigorous imprisonment up to 7 years (not less than 6 months) and fine in other cases.

a person aspiring to deliver his return of income electronically may sign it manually or digitally. To do so, he is required to obtain a digital signature.<sup>12</sup>

### **The Prevention of Money Laundering Act 2002, (PMLA)**

PMLA<sup>13</sup> was passed in order to put a stop to the practice of money laundering. It also provided for seizure of property is consequential from or involved in money laundering and for matters connected therewith and incidental thereto. Global obligations under political declarations including the international program of action adopted by the General Assembly, United Nations for the purpose of preventing money laundering are also taken under the ambit of the Prevention of Money Laundering Act (PMLA) 2002 as mentioned under section 2.<sup>14</sup> Corporations have a gigantic hand when it comes to laundering of money in order to avoid the payment of taxes. Money laundering, not being a victimless crime harms the financial status of the nation by causing an immense deficit to the economy.

For instance, a politician, who has his money is stashed aboard, picks up a small script which is almost hundred per cent owned by a few individuals, may quote the price as meagre as Rs. 4 which is bought legally through the stock market by the politician. The whole scenario being managed, the operators then elevate the amount of the script from Rs. 4 to a 100 rupees though thin and circular trading. At this part of the arrangement, the amount elevated to a hundred rupees is placed in a sub- account of a possibly much known Foreign Institutional Investor (FII) based in Mauritius. The Mauritius FII, picks up that stock thus splashing out the news that an Indian politician firm selling to a FII of Mauritius. however practically, the politician's money stockpiled in Mauritius FII is laundered to his Indian account with the long-term capital tax gains being zero leading to the corporation based in India not paying any tax, further benefiting him of the reports publicised regarding the foreign FII's buying stock which pilots various valuable retailer investors to get involved in this business of evading the payment of taxes. Therefore, the politician does not just launder money but also ends up making more money by selling stock to other investors.

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<sup>12</sup>A digital signature is an electronic signature issued by the certifying authority that shows then authenticity of the person signing the name.

<sup>13</sup>Ministry of Law and Justice (Legislative Department), *Prevention of Money Laundering Act 12*, GAZATTE OF INDIA (January 4, 2013) <http://indiacode.nic.in/acts-in-pdf/022013.pdf> (last visited Aug. 9, 2017).

<sup>14</sup>*UNODC on Money Laundering and Countering the Financing of Terrorism*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/money-laundering/> (last visited Aug. 9, 2017).

Also see <https://www.unodc.org/documents/money-laundering/GPML-Mandate.pdf> (last visited Aug. 9, 2017).

The problem of black money is no longer constrained to the geo- political margins of any nation as it has become a worldwide threat that cannot be restricted by any sole country. In sight of this, India has become a member nation of Financial Action Task Force (FATF) and Asia Pacific Group on Money Laundering (APG), which are devoted and dedicated to the operative implementation of the globally acknowledged ideals against financing of terrorism and the money laundering. Resulting to the action plan of FATF to bring India's anti- money laundering laws on par with globally recognised ideals to tackle shortcomings of the act that have been qualified by the executing agencies. The Prevention of Money Laundering Act 2002, (PMLA) was amended to *Prevention of Money Laundering (Amendment) Bill 2011* which became the Prevention of Money Laundering Act (PMLA) 2012.<sup>15</sup>

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## BENAMI TRANSACTION LAWS

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*Benami Transactions (Prohibition) Amendment Act 2016* is a comprehensive legislation designed to curtail the menace of black money. Companies are contained within in the definition of 'person' as defined under section 24 of act. Through an amendment carried out in the Benami transactions act 1988, a person who is indulged in these transactions is liable to be punished for seven years of imprisonment and fine instead of three years of imprisonment and fine.<sup>16</sup> The act also penalizes any person furnishing fake information to be punished by imprisonment up to five years and fine.<sup>17</sup> The other features of the act are that benami properties are to be confiscated by the government without any compensation, an order may be approved by the initiating officer in order to continue to hold the property and then further refer the matter to the adjudicating authority, one of the duty of the adjudicating officer is to inspect and scrutinize the evidence and pass an order accordingly, the appellate tribunal shall hear appeals against the Adjudicating officer and further the High Court may hear appeals against the orders of the appellate tribunals. Till the 23<sup>rd</sup>

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<sup>15</sup>(No. 2 of 2013) and came into force from 15<sup>th</sup> February 2013, vide notification S.O 343 (E).

<sup>16</sup>Section 53(2) of the Benami Transactions (Prohibition) Amendment Act 2016

Ministry of Law and Justice, *The Benami Transactions (Prohibition) Amendment Act 2016*, GAZETTE OF INDIA (10<sup>th</sup> August 2016)

[http://karnatakajudiciary.kar.nic.in/hcklibrary/pdfupdates/BENAMI\\_TRANSACTIONS\\_\(PROHIBITION\).pdf](http://karnatakajudiciary.kar.nic.in/hcklibrary/pdfupdates/BENAMI_TRANSACTIONS_(PROHIBITION).pdf) (last visited Aug. 9, 2017).

See IANS, *Black Money: Benami Property Transactions Prohibition Act Comes into Force*, THE ECONOMIC TIMES (November 1, 2016, 8:04 PM IST)

<http://economictimes.indiatimes.com/news/economy/policy/black-money-benami-property-transactions-prohibition-act-comes-into-force/articleshow/55187042.cms> (last visited Aug. 10, 2017).

<sup>17</sup>Section 54 of the Benami Transactions (Prohibition) Amendment Act 2016.

May 2017, the directorates of the income tax investigation have found out 400 and more Benami transactions.<sup>18</sup>

In an instance, a benamidar driver of Jabalpur who happened to be the owner of the land worth Rs 7.7 crore, however a Madhya Pradesh based company is stated to be the beneficial owner. Another example is of a professional of Mumbai was found to be holding several lands in the name of shell companies that only were existent on paper. According to the facts of another case in Rajasthan, a jeweller was found to be the beneficial owner of 9 immovable properties. These properties were in the name of his former employee, a man of no means. These properties were acquired through shell companies. It was shocking that these shell corporations were attached by the department in Kolkata.<sup>19</sup> 24 Benami Prohibition Units (BPUs) has been set up under the supervision of the principle directors of investigation in the income tax department for an effective mechanism of the act. The income tax department has also embarked on searches on ten senior officials of the government to unearth black money thus introducing accountability in the public life.

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#### **PUBLIC PROCUREMENT BILL 2012**

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Permitted on 12<sup>th</sup> April 2012, by the Union Cabinet, the Public Procurement Bill 2012, it strives to control procurement by ministers of the Central Government and its subsidiary bodies. Central Public Centre Enterprises (CBSEs) is an autonomous institution and its other agencies are controlled by central government ensuring accountability, transparency as well as integrity in procurement procedure, safeguarding sincerity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, and strengthening public assurance in public procurement.

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#### **PREVENTION OF BRIBERY OF FOREIGN OFFICIALS AND OFFICIALS OF THE PUBLIC INTERNATIONAL ORGANIZATIONS BILL**

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This bill holds both, the person-giving bribe as well as the person accepting bribe liable for a criminal offence for which the punishment prescribed is imprisonment up to seven years and other stringent penal provisions too. The legislation was made to be an exclusive

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<sup>18</sup> *Taxman unearth 400 Benami deals*, THE ASIAN AGE (May 25, 2017, 6:54 AM IST) <http://www.asianage.com/business/in-other-news/250517/taxmen-unearth-400-benami-deals.html> (last visited Aug. 10, 2017).

<sup>19</sup> *Income tax department steps- up actions under the Benami transactions*, PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA, MINISTRY OF FINANCE (24 May 2017, 20:30) <http://pib.nic.in/newsite/PrintRelease.aspx?relid=162110> (last visited Aug. 10, 2017).

legislation that would deal with the bribery done by foreign officials as it is not covered under the ambit of the present domestic anti-corruption laws.<sup>20</sup>

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### THE LOKPAL AND THE LOKAYUKTA ACT, 2013

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The Lokpal and the Lokayukta Act, 2013 act is an anti-corruption act, popularly known as the Lokpal bill seeks to inquire accusations of corruption against the institutions functioning for the public at large.<sup>21</sup> According to a 2011 survey, India positioned 95<sup>th</sup> in corruption perception index of transparency international. According to its data, India's corruption had cost it a billion amounts of dollars which derailed the growth of the nation at a huge extent.<sup>22</sup> Global financial integrity, Washington released a report which estimated India losing an astounding wealth of \$462 billion to the illicit financial flows due to post independence corruption, crime that includes tax evasion.<sup>23</sup>

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### PUBLIC INTEREST DISCLOSURE AND PROTECTION TO PERSONS MAKING THE DISCLOSURE BILL, 2011.

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Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2011 is also called generally as the Whistle-blowers Bill. It seeks to grant safety and security to persons reporting fraud, bribery, wilful misuse of discretion or any other allied corruption offences, leading to cause a notable loss to a government or a commission. It also includes a public servant committing a criminal offense under its ambit. While particular measures set out the method to investigate disclosures and provide for the vital standards against victimization of the whistle-blower. The bill strives for provision of punishment for filing of dishonest and frivolous complaints.

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<sup>20</sup> *Government to move fresh bill to tackle bribery by foreign officials*, LIVE MINT (June 22, 2015) <http://www.livemint.com/Politics/pB5Zzfv5dw3PRIBhdROFkN/Govt-to-move-fresh-bill-to-tackle-bribery-by-foreign-officia.html> (last visited Aug. 10, 2017).

<sup>21</sup> IANS, *Lokpal Bill Tabled In Rajya Sabha, Din Blocks Debate*, BUSINESS STANDARD (December 13, 2013) [http://www.business-standard.com/article/news-ians/lokpal-bill-tabled-in-rajya-sabha-din-blocks-debate-113121300622\\_1.html](http://www.business-standard.com/article/news-ians/lokpal-bill-tabled-in-rajya-sabha-din-blocks-debate-113121300622_1.html) (last visited Aug. 10, 2017).

<sup>22</sup> *India yoga guru Baba Ramdev to launch protest*, BBC NEWS (4 June 2012) <http://www.bbc.com/news/world-asia-india-18320444> (last visited Aug. 11, 2017).

<sup>23</sup> *Graft and bribe: India lost \$462 billion post-independence*, THE ECONOMIC TIMES (18 JUNE 2011) <http://economictimes.indiatimes.com/news/politics-and-nation/graft-and-bribe-india-lost-462-billion-post-independence/articleshow/8897228.cms?inttarget=no> (last visited Aug. 11, 2017)

*See Indian bribery and corruption exposed*, INTERNATIONAL FINANCIAL LAW REVIEW (24 April 2013) <http://www.iflr.com/Article/3196287/Indian-bribery-and-corruption-exposed.html> (last visited Aug. 11, 2017)

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## RECENT TRENDS

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India, on 29<sup>th</sup> February 2016, connected with numerous other nations that have taken appropriate measures to implement, regulate and report the needs projected under Action 13.<sup>24</sup> While declaring the 2017 budget, the finance minister told the parliament that the reporting demand would be introduced to the income tax act and would be applicable from April 2017. He also stressed on executing Action 13 in India.

Nevertheless applying such high enormity law-making alterations and modifications need a wide public discussion. A CbC (country-by-country) information would contain vital details regarding the operations of a corporation in respect of each nation in which it does business in. Corporate tax evasion is a global issue; however before honouring exchange requests coming from foreign jurisdictions, India must ensure that such jurisdictions have stringent domestic laws to safeguard taxpayer information.

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## CONCLUSION

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After a disturbance in parliament, the Indian government has come up with ways to tackle the problem of black money generations and tax frauds committed by the corporates these reports made on the subject display various aspects its multifaceted relationship with political and administrative management of the nation. With liberalization, limitations on cross border flow of goods and services along with slackening of foreign exchange control, new prospects have opened up for tax evasion through tax havens, offshore registration and misappropriation of transfer pricing and other sophisticated methods. These deviations in modus operandi of economic crimes require new approaches. The campaign against generation and accretion of black money is far more complex and lengthy, requiring sturdier intrusion of state. It needs a robust legal framework, proportionate administrative setup, and a strong resolution to fight the menace. Instead of decades of tax research, a very meagre amount is known to us about the struggles of the authorities of the legislature, executive and judiciary to avoid the evasion of taxes. The purpose of this research is to shed some light on this question that why so little has been done in terms of corporate tax frauds. A large amount of corporates that appear to be successful have avoided payment of their taxes and got away with it. The low long run cash effective rates and mechanisms are associated with being a large firm being incorporated in tax havens, having an exceedingly huge ratio of property, plant and equipment to assets, being intangible intensive and enormously levered. Evading of taxes damages the economy at large enormously.

The bottom line is that in taxes, a rupee saved leads to cores in penalty to be paid later.

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<sup>24</sup>Action 13 is an action plan that aids nations to prevent base erosion and profit shifting (BEPS) facilitating corporations to pay taxes which include country –by- country accounting its profits.