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RGICS ISSUE BRIEF

(APRIL 23, 2015)

Black Money: Concerns & Policy Challenges

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Context

Bringing back black money from abroad was a major poll promise of BJP, and, as is the case with most of the promises, actions are far from poll rhetoric. The issue of black money captures imagination of common person because common person is exposed to it in almost all walks of life - paying bribes to get a legitimate thing done on time/getting job/getting children admitted in schools, real estate deals where the amount in which the property gets registered is far less than the actual amount paid, and the list continues. Media has been quite active in capitalizing on this common person's imagination by dropping different estimates of the parallel economy – not uncommon has been estimates in the media which ran as high as 50 – 70 per cent of GDP. Such unsubstantiated numbers might serve the purpose of sensationalizing the issue in times of elections, but they often fail to bring real issues to the forefront. Estimation is only one part of it. There are other factors as well which needs to be looked into – causal origin and characteristics, and impact on society. This brief will look into some of these issues.

Estimates

There are various methods of estimating black money:

- Fiscal approach
- Monetary approach
- Physical input approach
- Labour market approach
- National accounts approach

To begin with, these different methods differ in their definitions of black money, and also in their methodology. Analysing them is far beyond the scope of this policy brief. By and large, money earned without paying legitimate tax is referred to as black money, though technically, it is not a very precise and exhaustive definition.

Estimates of black money stashed abroad ranges from US$2 billion to US$12.4 trillion. **According to White Paper on Black Money in India report, published in May 2012, Swiss National Bank estimated that the total amount of deposits in all Swiss banks, at the end of 2010, by citizens of India were CHF 1.95 billion (INR 92.95 billion, US$2.1 billion)**. In 2011, the Indian government received the names of 782 Indians who had accounts with HSBC, which is certainly not an exhaustive list. Nobody knows about the real estimates of black money, and there is a lot of speculation about the figures.

Several studies have tried to ascertain the magnitude of black money in the economy. These studies followed different methodology and have often been criticized for their assumptions. Due to different methodologies being adopted, there were considerable variations in their estimates. The last official published study for estimating black money generation was conducted at the behest of the Ministry of Finance by the National Institute of Public Finance and Policy (NIPFP) in 1985. This study concluded that the total black money generated in the economy for the year 1980-81 was 20 per cent of GDP. The World Bank Development

Research Group on Poverty and Inequality and Europe and Central Asia Region Human Development Economics Unit in July 2010 estimated 'Shadow Economies' of 162 countries. The study estimated that for India, magnitude of shadow economy was 20.7 per cent of GDP in 2007.

Causal origin & characteristics - where is black money located and what do people do with it?

Black money not only exists outside the country, there is a lot of black money within India as well. The question that we need to answer is what we have done to trace black money at home – and this does not require compliance of international rules and regulations. It only requires domestic political will. So the issue with black money is not only to bring back the money stashed abroad, but also to unearth it within the domestic boundaries.

International Aspect

In order to track black money and take steps to bring it back, it is important to understand the process of its generation, how it is siphoned out of the country, how it is deployed in different investment schemes without its source being traced. **Even though the focus has remained on Switzerland, during the last two decades, new destinations have come up like Dubai, Singapore, Virgin Islands, Luxembourg.** Dubai has now become the new centre of black money. People with unaccounted or black money are increasingly turning to gold and diamond traders in Dubai who can place that money in the market without any trace of identity. Krishnaswamy and Shaw, 2014, observed that "there are strong reasons to believe that the mysterious growth of India's trade with a non-oil producing emirate is linked to the transfer of illegal monies to this offshore financial centre". As per data released by the Department of Industrial Policy and Promotion (DIPP), from April 2000 to March 2011 FDI from Mauritius is 42 per cent of the entire FDI received by India. Mauritius being a small economy cannot be the source of such huge investment, and therefore, "it is apparent that the investments are routed through these jurisdictions for avoidance of taxes and/or for concealing the identities from the revenue authorities of the ultimate investors, many of whom could actually be Indian residents, who have invested in their own companies, though a process known as round tripping" (GoI, 2012).

Switzerland, on the other hand had to reform its banking secrecy provisions after 2009 due to tremendous international pressure notably from United States. Therefore, if the government of India is really serious about the issue, there should not be much difficulty in it. However, in today's world companies and individuals appoint fund managers to manage their investment, particularly overseas investment, and foreign bank accounts form only one part of this overseas investment.

The question however is, will the bank accounts still have unaccounted money? Ravi Kanth (2014) pointed out "with the increasing difficulties involved in individuals maintaining undeclared accounts, there is a shift towards maintaining funds through a structured company or trust with nameplate addresses often located in Mauritius or other tax havens. By maintaining trusts, it becomes doubly difficult for the Government of India to provide evidence about the real identity of individuals behind these trusts". Further, allowing participatory notes in financial market aggravates the problem of non-traceability of illegal funds.

Domestic Aspect

Within the domestic sector, the major sources of illegal money in India real estate, and export/import. Based on a survey carried out among senior revenue officials (where they were asked to rank sources of black money generation), Acharya et al. (1986) reported that more than 80 per cent of respondents ranked **capital gains from real estate transactions as the foremost source of black money generation in the economy.** Further, it is again the real estate sector where large part of illegal money is reused in the domestic sector. The report, "Measures to Tackle Black Money in India and Abroad" (Ministry of Finance 2012), noted that the real estate sector contributes significantly both to the generation of black money as well as to its deployment.

Acharya et al.(1986), further observed that a substantial part of the black money was used for consumption of goods and services. Also, usage of black money was dependent on category of people who held it. For salaried class and self-employed, it was largely spent on consumption of goods and services. A business person with typically more access to different avenues of re-investment will plough back a large part of the black money held across different activities. The most important vehicle of holding black wealth was undervalued real estate, both residential and commercial.

Impacts on the Society, Polity and Economy

On a broader perspective, existence of black economy systematically subverts public institutions, and subsequently weakens the entire political and administrative structure of the country.

1. The most important and immediate impact is revenue loss to the government which restricts various social sector initiatives.
2. Unaccounted transactions result in economic inefficiency, promote rent seeking activities, and divert a substantial part of scarce resources into high risk-high return ventures.
3. Policy making and implementation also becomes difficult because due to the parallel economy actual savings is higher than reported savings.
4. Actual distribution of household income might be quite different from reported distribution. It has been observed that "black liquidity, by becoming alternative source of finance, often conflicts with credit rationing policies of monetary authorities" (Chugh, 1978).

Policy Strategies adopted to deal with the problem of Black Money in India

In the year 1958, a Direct Taxes Administration Enquiry Committee was formed to suggest an integrated scheme of taxation for facilitating compliance and preventing tax evasion. It also made substantial contribution to the reorganization of tax administration. One of the main thrusts of these reforms consists of optimizing the tax rates. The income tax rates were in the range of 25-30 per cent till the early 1960s, but gradually increased to reach a peak of 85 per cent with a 15 per cent surcharge during the 1970s. The high marginal tax rates of over

90 per cent in the early 1970s were often considered a major reason for tax evasion and generation of black money.[1]

Therefore, in the post liberalization period, the rates were brought down subsequently and have been at around 30 per cent since 1997. Along with these reforms, the policies of liberalization of tariff and non-tariff barriers also attempted to address some of the underlying reasons for black money. However, with liberalization of restrictions on cross-border flow of goods and services and relaxation of foreign exchange control, new opportunities opened up for tax evasion through tax havens, misuse of transfer pricing and other sophisticated methods. Globalization reduced the cost of these sophisticated methods thereby facilitating generation of black money and its transfer across the border. These changes subsequently required new strategies to curb black money at policy level.

In the light of such transformations, that led to the generation of black money both through domestic practices and through globalized development that facilitated its generation, the Government of India had resorted to a five-pronged strategy, which is as follows:

(a) Joining the global crusade against black money
(b) Creating appropriate legislative framework
(c) Setting up institutions for dealing with illicit money
(d) Developing systems for implementation
(e) Imparting skills to personnel for effective action

A. <u>Joining the global crusade against black money</u>

I. Tax Instrument System

- India has been a strong proponent of transparency and exchange of information for tax purposes and has pushed the G20 forum to exert pressures on countries that do not conform to the international standards of transparency. At the London summit in April 2009, India played a major role in developing international consensus for taking action against tax havens.

- It was on India's initiative in November 2010 at the Seoul Summit that the G20 gave a call for concluding the Tax Information Exchange Agreement (TIEA). Prior to this, some countries were not willing to enter

[1] The problem of black money and tax evasion is a persistent challenge faced by India since decades. In fact, the evolution of the strategies to deal with the problem started in 1930s itself. In 1936, Ayers Committee, suggested large-scale amendments to secure the interests of the honest taxpayer and effectively deal with fraudulent evasion. Thereafter, in 1947, an Income-Tax Investigation Commission was appointed. The commission was appointed to investigate tax evasion and suggest measures for preventing it in future. In between, a Taxation Enquiry Commission (1935-54) also went into the question of tax evasion and recommended several legal and procedural changes. Further, in 1956, Nicholas Kaldor made a specialized study of the Indian tax system which included prevalence of tax evasion. The recommendations of the study resulted in several amendments and new legislations like the Wealth Tax Act.

into TIEAs and were insisting on entering into Double Taxation Avoidance Agreements (DTAA). Both the DTAA as well as TIEA are effective tax information exchange mechanisms.

II. Money Laundering & Terrorism Fund

- India signed the International Convention for the Suppression of the Financing of Terrorism on 8 September 2000 and ratified it on 22 April 2003. The convention each state party to take appropriate measures, in accordance with its domestic legal principles, for the detection and freezing, seizure, or forfeiture of any funds used or allocated for the purposes of committing the offences described, as well as take alleged offenders into custody, prosecute or extradite them, cooperate in preventive measures and countermeasures, and exchange information and evidence needed in related criminal proceedings.

- India, having met the strict evaluation norms of the Financial Action Task Force (FATF), was granted full-fledged membership (34th Member) in June 2010. Further, in recognition of India's efforts in this regard, the Asia Pacific Group (APG) on Money Laundering and Terrorist Funding chose India as Co-chair of the Group at its annual meeting in Singapore in July 2010.

- On 5 May 2011, India ratified the United Nations Convention against Transnational Organized Crime (Palermo Convention), which was signed on 12 December 2002. The purpose of this Convention is to promote international cooperation in preventing and combating transnational organized crime more effectively.

- On 9 May, 2011 India became the 152nd country to ratify the United Nations Convention against Corruption, which was signed on 9 December 2005.

- The Multilateral Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the Council of Europe and the OECD and was opened for signature by the member states of both organizations on 25 January 1998. India signed the Convention on 26 January 2012 and ratified it on 2 February 2012, thus becoming the first country outside the OECD and European countries to join it.

III. Illicit Trafficking

- India has also joined the United Nations Convention against Illicit Traffic in Narcotic Drugs And Psychotropic Substances on 27 March 1990.The purpose of this Convention is to promote cooperation among the parties so that they may more effectively address the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension.

- Financial Intelligence Unit-India (FIU-IND) was admitted as a member of the Egmont group in May 2007 and since then India has been playing an important role in facilitating cooperation amongst FIUs through this Group.

B. Creating an appropriate legislative framework: UPA Initiatives

I. Tax Instrument System

- **Strengthening Direct Taxes provisions including those relating to International Taxation and Transfer Pricing**
  - A number of significant changes were brought about through the Finance Act 2011 and Finance Bill 2012 to check the menace of black money and in line with our joining the global crusade
  - A new section 94A was introduced in the Income Tax Act to discourage transactions between residents and persons located in jurisdictions which do not effectively exchange information with India (non-cooperative jurisdictions).
  - General Anti Avoidance Rules (GAAR) have been introduced with effect from 1 April 2014 to check aggressive tax planning with the use of sophisticated structures. With adequate safeguards to prevent the misuse of the provisions, it will ensure that the real substance of transactions will be taken into account for determining tax consequences.

- **Creating network of DTAAs and TIEAs as per International Standard**: In 30 out of India's 82 DTAAs, there is provision for assistance in collection of taxes which facilitates repatriation of assets located outside India to the extent of the outstanding tax demand which cannot be collected in India.

II. Money Laundering

- **Prevention of Money Laundering Act**: The Prevention of Money Laundering Act 2002 was enacted to prevent money laundering and provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. The Act also addressed international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering. To strengthen the provisions of the PMLA, amendments were carried out in 2009 and 2011.

- **Prevention of Benami Transactions**: One of the important initiatives taken by the Government is the introduction of the Benami Transaction (Prohibition) Bill 2011. This comprehensive legislation was introduced in the Lok Sabha on 18 August 2011, but it lapsed. It was expected to iron out the infirmities in the Benami Transaction (Prohibition) Act enacted in 1988 and formalise the procedure for implementing the benami law, including the procedure for determination, confiscation, prosecution, and miscellaneous requirements.

III. Corruption based Instruments

- **Public Procurement Bill**: The Public Procurement Bill 2012 was approved by the Union Cabinet on 12th April 2012 for introduction in Parliament, but got lapsed. The Bill seeks to regulate procurement by ministries/ departments of the central Government and its attached/subordinate offices, central public sector enterprises (CPSEs), autonomous and statutory bodies controlled by the central government and other

procuring entities with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, safeguarding integrity in the procurement process, and enhancing public confidence in public procurement.

- **Prevention of Bribery of Foreign Public Officials Bill**: The Prevention of Bribery of Foreign Public Officials and Officials of the Public International Organisations Bill 2011 was introduced in the Lok Sabha on 25 March 2011, but got lapsed. The Bill seeks to prevent corruption relating to bribery of foreign public officials and officials of public international organisations and to address matters connected therewith or incidental thereto.

- **Lokpal and Lokayukta Bill**: The Lokpal and Lokayuktas Bill, 2011, introduced on December 22, 2011 was passed by the Lok Sabha on December 27, 2011. The Bill envisages setting up of the institution of Lokpal consisting of a Chairperson and eight Members with the stipulation that half of the Members shall be Judicial Members. It shall have its own Investigation Wing and Prosecution Wing with such officers and staff as are necessary to carry out its functions. The Lokpal shall inquire into allegations of corruption made in respect of the Prime Minister after he has demitted office; a Minister of the union; a Member of Parliament; any Group 'A' officer or equivalent; Chairperson or member or officer equivalent to Group 'A' in any body/ board/ corporation/ authority/ company/ society/ trust/ autonomous body established by an Act of Parliament or wholly or partly financed or controlled by the central government; and any director, manager, secretary or other officer of a society or association of persons or trust wholly or partly financed or aided by the government or in receipt of any donations from the public and whose annual income exceeds such amount as the central government may by notification specify. However, organisations created for religious purposes and receiving public donations shall be outside the purview of the Lokpal.

- **Citizens' Grievance Redressal Bill**: The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 was introduced in the Lok Sabha 2011, but lapsed. It outlines the responsibilities of government departments towards citizens and how someone who is denied the service due to him can seek redressal. It mandates that every public authority or government department has to publish a citizen's charter listing all services rendered by that department along with a grievance redressal mechanism for non-compliance with the citizen's charter. It also sets up a Central Public Grievances Redressal Commission, with an equivalent in every state, and provides for a designated authority from a department other than the one against which the complaint has been filed to address the complaint.

- **Whistleblower's Protection Bill, 2011**: The bill is passed in both Lok Sabha and Rajya Sabha. It seeks to establish a mechanism to register complaints on any allegations of corruption or wilful misuse of power against a public servant. The Bill also provides safeguards against victimisation of the person who makes the complaint.

- **Direct Payment into Bank Accounts of Payees**: As part of the Government's commitment to good governance and elimination of corruption, the Ministry of Finance had amended the relevant rules to enable all ministries and departments to facilitate payments by direct credit to the bank accounts of payees. Orders

have also been issued by the Controller General of Accounts (CGA) that, with effect from 1 April 2012, all payments above ` 25,000 to suppliers, contractors, and grantee and loanee institutions shall be directly credited to their bank accounts. However, all other payments to government servants of an amount above ` 25,000 shall be credited directly to their bank accounts.

- **Unique Identity (UID)-Aadhaar**: This initiative is expected to cut down corruption and the generation of black money in India since Aadhaar platform will facilitate payments under various schemes like; LPG subsidies, old age, widow and disability pensions; and scholarships to be made directly into beneficiary accounts in selected areas.

IV. Judicial Reforms

- **Judicial Standards and Accountability Bill**: The Judicial Standards and Accountability Bill 2010 was passed in the Lok Sabha. The Bill provides a mechanism for enquiring into complaints against judges of the Supreme Court and High Courts, lays down judicial standards, and requires judges of the Supreme Court and High Courts to declare their assets and liabilities. The Bill seeks to replace the Judges (Inquiry) Act 1968 while retaining its basic features.

V. Illicit Trafficking

- **Amendments to the NDPS Act**: The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011 was introduced in the Lok Sabha on September 8, 2011, but got passed in both the houses in 2014. The Bill seeks to amend a number of provisions of the NDPS Act including modification of the definitions of 'small' and 'commercial' quantities, standardisation of punishment for consumption of drugs, and transfer of the power to regulate 'poppy straw concentrate' from the state governments to central government. It also widens the scope for forfeiture of illegally acquired property, wherein any property of a person who is alleged to be involved in illicit traffic and the source of which cannot be proved constitutes 'illegally acquired property' and is liable to be seized.

C. <u>Setting up Institutions for dealing with illicit money</u>

- **Directorate of Criminal Investigation**: Till 2011, the tax administration in India did not have a separate set-up for targeted investigation into criminal cases. On 30 May 2011, a notification has been issued by the Government of India for creation of a Directorate of Income Tax (Criminal Investigation) or DCI in the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance. The DCI is mandated to perform functions in respect of criminal matters having any financial implication punishable as an offence under any direct taxes law.

- **Cell for Exchange of Information**: The Government of India has set up an Exchange of Information (EOI) Cell in the Foreign Tax and Tax Research (FT&TR) Division of the Central Board of Direct Taxes (CBDT). The EOI works on the basis of mutual cooperation. The competent authorities of

different countries provide different forms of administrative assistance to each other based on the provisions of DTAAs/TIEAs or the Multilateral Convention for Mutual Administrative Assistance.

- **Income Tax Overseas Units**: With increased scope for international cooperation in areas of exchange of information, transfer pricing, and taxation of cross-border transactions, Government of India decided to create a network of Income Tax Overseas Units (ITOUs). In addition to the existing two ITOUs at Singapore and Mauritius, eight more had been opened.

- **Strengthening the FT&TR Division in the CBDT**: The FT&TR Division of the CBDT has been playing a pivotal role in negotiating DTAAs and TIEAs, therefore the FT&TR Division has been strengthened by creating many new posts of Director, Under Secretary, and Section Officer (SO) along with supporting staff.

- **Strengthening of Investigation Division of the CBDT**: The Investigation Division of the CBDT has also been enlarged and have been created to deal with the increasing workload relating to black money. The Directorates of Income Tax (Central Information Branch) have been re-designated Directorates of Income Tax (Intelligence) and given powers under the Income Tax Act 1961 to collect as well as verify information.

D. <u>Developing systems for implementation</u>

- **Integrated Taxpayer Data Management System (ITDMS) and 360-degree Profiling**: The information collected by the Income Tax Department from various sources such as AIR, tax deduction at source (TDS), the Central Information Branch, OLTAS, etc. is collated in a computerized environment to create a 360-degree profile of the high net-worth assesses, termed ITDMS. The ITDMS is utilized for investigation of tax evasion complaints and for developing cases for search and seizure actions.

- **Setting up Cyber Forensic Labs and Work Stations**: During the course of search and seizure operations, specialized skills are required for identifying and safely retrieving relevant data. Apart from protecting the evidentiary value of data seized in the course of search and seizure operations, cyber forensic labs aim at retrieving hidden, password-protected, and deleted files and at giving protection against advanced software tools (logic bombs) which get activated if the system is not shut down/started with a particular set of keystrokes.

- **CAIT for Focused Investigation:** The Investigation Wing of the CBDT has developed a software audit tool to analyse computerised books of accounts so as to assist tax officers in tax assessments. The computer-assisted investigation tool (CAIT) can analyse accounts maintained on various accounting software available in market - such as Tally, ERP, and SAP -and thus help officers of the Income Tax Department conduct audit and investigation on a number of parameters. This was accessed by the departments for the first time in 2011-12.

- **Goods and Services Tax Network (GSTN)**: The Cabinet during UPA tenure had approved a proposal to set up a special purpose vehicle -GSTN (GSTN SPV) for providing shared IT infrastructure and services to central and state governments, taxpayers, and other stakeholders for implementation of the goods and services tax (GST), both before and after the rollout of GST.

- **Committee 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 in March, 2012.

E. **Imparting skills to personnel for effective action**

To this end, efforts have been made to regularly upgrade the skills of officers and staff and provide them exposure to the international experience and global best practices in effectively dealing with black money through various training modules.

NDA II's Initiatives to Curb Black Money

Formation of SIT: Prime Minister Narendra Modi's first decision in the maiden meeting of his cabinet in June, 2014, was to form a high-profile Special Investigation Team (SIT) to unearth illicit money. The SIT will be headed by former Supreme Court judge M B Shah and will include the highest-level officials from financial and economic departments as well as law enforcement agencies.
The decision came just a day before the Supreme Court's deadline to form the SIT was set to expire. The SIT will carry on investigation, initiate proceedings and prosecution in cases of Hasan Ali and other matters involving unaccounted money. It will also have jurisdiction in cases where investigations are already on or pending. It can also revisit cases where the probe has been completed. The SIT will report to the court on the status of the probe regularly.
Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015: Finance Minister Arun Jaitley had introduced the Bill (black money Bill in popular parlance) in the Lok Sabha on March 20, the last day of the first half of the session before Parliament went for a month's break. The Act will apply to all persons residing in India. Provisions of the Act will apply to both undisclosed foreign income and assets (including financial interest in any entity). Undisclosed foreign income or assets shall be taxed at the flat rate of 30 per cent. No exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income-tax Act, 1961, shall be allowed. Violation of the provisions of the proposed new legislation will entail stringent penalties.

The Real Estate (Regulation & Development) Bill, 2013: The bill was firstly introduced in the Rajya sabha in 2013 by the UPA government. The Union Cabinet on Tuesday, April 7, 2015 approved amendments to the long-pending real estate bill to bring under its ambit commercial and all ongoing projects as also brokers, while safeguarding consumers. The new recommendations on the Real Estate Regulatory Bill will now be tabled in the Parliament for passing the bill and making it an Act. The bill seeks to ensure accountability and

transparency, which will in turn enable the real estate sector to access capital and financial markets essential for its long-term growth.

Other Initiatives of NDA II

During 2015-16 budget speech, the Finance Minister, Arun Jaitley introduced following measures to curb black money:

- Quoting of PAN is being made mandatory for any purchase or sale exceeding the value of Rs.1 lakh. The third party reporting entities would be required to furnish information about foreign currency sales and cross border transactions.
- Finance minister has also proposed banning advance payment beyond Rs 20,000 for real estate deals. He has proposed to amend the Income-tax Act to prohibit "acceptance or payment" of an advance of Rs.20,000 or more in cash for purchase of immovable property.

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