

Original Article

Legal Dimensions of Black Money and Financial Corruption in India

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Black money — undeclared or illicit wealth held domestically or abroad — and financial corruption continue to pose systemic risks to fiscal integrity, governance, and equitable development in India. This paper examines the legal architecture India has built to address black money and corruption, analyses enforcement institutions and tools. The paper highlights the key statutes (Black Money Act 2015, Prevention of Money-Laundering Act 2002, Benami Transactions Prohibition laws, FEMA, and criminal anticorruption provisions), international cooperation instruments (CRS/AEOI, FATCA, MLATs), and institutional practices (CBDT, ED, CBI, FIU-IND, SFIO). Through critical analysis the paper exposes enforcement gaps — procedural delays, evidentiary difficulties, inter-agency coordination shortfalls, privacy and rule-of-law concerns, and the evolving challenge of digital/crypto assets and opaque beneficial ownership — and recommends legal, institutional and policy reforms to strengthen India's response to illicit finance.

Keywords: black money, money laundering, FATCA, CRS, AEOI, beneficial ownership

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Introduction-

The internationalization of finance has offered states unprecedented benefits — capital inflows, cross-border investment and integration into global value chains — but also spawned mechanisms for hiding assets, evading tax, and laundering the proceeds of corruption. For India, the problem of "black money" has featured prominently in public discourse and policy debates for decades, cutting across economic, political, and legal spheres. Illicit financial flows erode tax revenue, distort markets, reduce public trust, and strengthen rent-seeking networks; therefore an effective legal regime against black money and financial corruption is central to governance and fiscal health.

This paper maps India's legal framework and institutional apparatus, traces how law and policy have evolved in response to major disclosures and scandals, and critically examines whether statutory tools and enforcement structures have been adequate to the scale and sophistication of contemporary illicit finance. The analysis situates domestic law in the broader context of international cooperation mechanisms (automatic exchange of information, FATCA, MLATs) and the emerging frontier of crypto and beneficial ownership opacity.

Defining black money and the legal typology-

"Black money" is an imprecise popular phrase that generally covers:

Undeclared income or assets (tax evasion), wealth acquired through corrupt or criminal activity (proceeds of crime), assets hidden through benami arrangements, shell companies, or secrecy jurisdictions.

From a legal perspective, addressing black money requires tackling at least three related but distinct problems:

1. Tax evasion — civil and criminal sanctions under domestic tax law together with disclosure/reporting regimes;

2. Money-laundering — criminalizing the concealment, possession, or transfer of proceeds of crime and enabling asset restraint and confiscation (PMLA architecture);

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3. Concealment through ownership opacity — benami property, nominee structures and anonymous corporate vehicles.

India's statutes address these nodes in different instruments discussed below.

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

The Black Money Act, enacted in 2015, created a dedicated statutory regime to tax and penalize undisclosed foreign income and assets held by residents abroad. The Act prescribes a high tax rate and punitive penalties, and provides for special procedures for detection and adjudication. It marked a major legislative step to target undisclosed offshore assets and complemented India's participation in global information-exchange mechanisms. The Act's text and operational provisions provide the tax authority with statutory bases to assess and penalize undisclosed foreign holdings.

Prevention of Money-Laundering Act (PMLA), 2002-

The PMLA criminalizes money-laundering — broadly defined as any process or activity connected with proceeds of crime including concealment, possession, use or transfer — and empowers the Enforcement Directorate (ED) to investigate, attach property, and pursue prosecution. PMLA also imposes reporting obligations on banks and financial intermediaries and establishes procedures for attachment and adjudication. It is the primary instrument for tracing proceeds of financial crimes and enabling asset recovery. Critics have pointed to very low conviction rates in earlier years and to concerns about procedural fairness; these criticisms have fuelled debates about due process, the breadth of attachment powers, and effective judicial oversight.

Benami Transactions (Prohibition) framework-

The Benami Transactions (Prohibition) Amendment Act, 2016 (and associated rules) strengthened the legal response to properties held in another's name. Benami laws enable confiscation and penalty for arrangements where property is held for the benefit of another, a common vehicle for hiding ill-gotten or untaxed wealth. The act aims to bring greater transparency to property markets and to make it harder to disguise beneficial ownership through nominees. The law and its implementation, however, have been the subject of judicial and practical refinements.

Other statutes and regulatory instruments-

Income Tax Act, 1961 — the primary code for income assessment, with amendments introducing information-reporting provisions (e.g., Section 285BA) to implement automatic exchange frameworks;

Foreign Exchange Management Act (FEMA) — addresses undisclosed or unlawful foreign exchange transactions;

Companies Act — corporate disclosure, audit and director accountability provisions that intersect with financial corruption;

Prevention of Corruption Act- criminalizes bribery and official corruption by public servants;

Criminal Procedure Code and Evidence Act — procedural frameworks for investigation, prosecution and admissibility of financial evidence.

These instruments form an interlocking legal scaffolding intended not only to detect and punish illicit finance but also to enable restraint, seizure, and recovery of assets.

International cooperation instruments-

Black money frequently crosses borders. India's domestic laws therefore operate in tandem with international instruments:

Automatic Exchange of Information (AEOI) / Common Reporting Standard (CRS)-

Under the OECD's CRS, participating jurisdictions exchange financial account information reported by financial institutions. India joined CRS processes and began receiving exchanges from other jurisdictions, which has assisted in tracing offshore accounts. Domestic rules — including information-reporting obligations on financial institutions — were adapted to implement CRS. These exchanges have been a pivotal investigative input for tax authorities. (See Domestic rule changes: Section 285BA and Form 61B.)

FATCA (India-U.S. IGA) - India and the U.S. signed a Model 1 Intergovernmental Agreement to implement FATCA, enabling the exchange of account information concerning U.S. persons. FATCA's global reach reshaped how financial institutions approach customer due diligence and reporting obligations. It also served as a model that influenced the design of multilateral CRS. (See India-U.S. FATCA IGA).

Mutual Legal Assistance Treaties (MLATs) and extradition cooperation-

India uses MLATs and extradition agreements to obtain evidence and repatriate suspects and proceeds. These mechanisms are critical but often criticized for speed and complexity; high-profile extradition cases (discussed below) reveal both their utility and limits.

Institutional architecture and investigative practice-

India's enforcement involves multiple agencies:

Central Board of Direct Taxes (CBDT) - tax assessments, information processing and policy;

Enforcement Directorate (ED) — investigates money-laundering under PMLA and pursues asset attachment;
Central Bureau of Investigation(CBI) - high-value corruption-linked criminal investigations;
Financial Intelligence Unit – India (FIU-IND) — receives suspicious transaction reports and relays intelligence;
Serious Fraud Investigation Office (SFIO) — probes corporate frauds;
Reserve Bank of India (RBI) and sectoral regulators — supervise financial intermediaries.

Coordination across these agencies, and with courts, is central to enforcement. The volume of incoming CRS/AEOI data and the multiplicity of predicate offences (tax fraud, corruption, customs evasion, corporate fraud) require both technical capacity (data analytics, forensic accounting) and legal clarity on the predicates for PMLA action.

Analytical and critical perspectives-

This section synthesizes strengths and shortcomings in India's legal response to black money.

Legal strengths and innovations-

Comprehensive statutory architecture: India has assembled a broad set of laws (Black Money Act, PMLA, Benami Act) that address different aspects of illicit wealth. These permit taxation, criminal prosecution, and asset attachment.

Integration with global transparency: India's adoption of CRS/AEOI and the FATCA IGA gave tax and enforcement authorities access to foreign-account data previously difficult to obtain. Swiss disclosures marked an important diplomatic success.

Institutional capacity-building: FIU-IND and data-processing upgrades at CBDT show institutional investment in analytics and case-generation.

Enforcement gaps, legal and practical-

Low conviction rates and process concerns under PMLA: Critics have highlighted that conviction rates under PMLA are low relative to cases registered, raising questions about evidentiary sufficiency, default reliance on attachment rather than speedy prosecution, and the “process as punishment” critique. These concerns highlight the importance of legal safeguards, quality of prosecutorial case-building, and court resources.

Judicial delays and procedural constraints: PMLA and Black Money Act cases often involve voluminous documents, cross-border evidence, and contested admissibility, leading to long timelines. MLAT and extradition processes are similarly time-consuming.

Beneficial ownership opacity: Offshore corporate structures and nominee arrangements continue to shield ultimate owners. Benami laws address some property-related opacity, but effective traceability requires corporate registries, beneficial ownership databases and enforcement of Know-Your-Customer (KYC) standards.

Data privacy and security: The large transfers of sensitive financial data under CRS/AEOI raise legitimate privacy and security concerns. Ensuring secure handling while enabling effective enforcement is a continuing legal and technical challenge. Switzerland's satisfaction with India's confidentiality framework was an important diplomatic milestone but maintaining high standards remains critical.

Policy critiques: amnesty, demonetization and one-off measures-

India has experimented with voluntary disclosure and amnesty schemes (e.g., 2015 Black Money Compliance Scheme, 2016 Income Declaration Scheme). While the schemes produced short-term declarations, critics argue they incentivize non-compliance prior to disclosure windows and do not substitute for sustained enforcement and information exchange. The 2016 demonetization experiment was explicitly framed as a measure to combat black money in cash — it had complex distributional and administrative effects and remains contested in terms of its efficacy against sophisticated offshore evasion.

The emerging frontier: crypto, digital assets and real estate-

The global tax transparency architecture was built primarily for regulated financial institutions. The rise of decentralized finance (DeFi), cross-border crypto custody, and opaque real estate markets presents new challenges. India's policy stance has increasingly focused on bringing crypto into AML/CFT regimes, improving real estate registries, and pressing for expansion of AEOI to cover non-financial assets or beneficial ownership of immovable property.

Recommendations: refining law, institutions and international engagement-

To strengthen India's legal & operational response, several reforms are recommended:

Legal and procedural reforms-

Strengthen evidentiary standards and prosecutorial capacity: Invest in specialized prosecutorial teams with financial forensics training to convert attachments into convictions. Enhance coordination between tax, enforcement and prosecution wings to avoid fragmented cases.

Judicial fast-tracking mechanisms: Establish special fast-track benches for complex economic offences involving cross-border evidence and PMLA matters, ensuring due process while reducing undue delays.

Transparency and beneficial ownership-

Ultimate Beneficial Ownership (UBO) registry: Create a central, searchable registry of beneficial ownership for companies, trusts and property that is accessible to regulators and law enforcement. This should be accompanied by robust legal penalties for false declarations and misuse.

Strengthen KYC/AML regimes across non-bank financial actors: Expand AML/CFT obligations to emerging financial intermediaries, payment providers and crypto on-ramps, with proportionate compliance support for smaller providers.

Data governance and secure analytics-

Robust data protection safeguards: Enact clear, enforceable legal standards for handling AEOI/CRS data, with technical standards for encryption, access control, audit trails, and penalties for breaches.

Analytics and open-source tooling: Invest in open-source forensic accounting tools, support in-house analytic capacity in FIU-IND and CBDT, and partner with academic institutions for tooling and talent pipelines.

International cooperation and treaty modernization-

Negotiate faster MLAT alternatives and secure channels: Advocate for more streamlined evidence-sharing protocols with key jurisdictions, including use of secure digital systems to accelerate information flow.

Push for real estate and crypto inclusion in AEOI: Use India's G20 and OECD engagement to press for extended exchange coverage, including beneficial-ownership data for immovable properties and standard reporting for crypto custodians.

Addressing governance and misuse risks-

Safeguards against political misuse: Strengthen parliamentary oversight of enforcement agencies and set clear rules for the initiation of high-value enforcement actions to reduce the perception or reality of politicization.

Whistleblower protection and incentives: Implement strong legal protections and controlled financial incentives for whistleblowers who provide credible leads on offshore concealment and corruption.

Conclusion-

India's legal architecture against black money and financial corruption — embodied in the Black Money Act, PMLA, Benami laws, tax rules, and international cooperation arrangements — represents a robust multi-pronged response to a complex problem. Case studies such as the Panama and Paradise Papers, Swiss disclosures, and high-profile corporate frauds demonstrate both the potency and limits of existing law-in-action: while statutory tools and international data flows now yield actionable leads, enforcement is constrained by evidentiary, procedural, capacity, and cross-border legal-cooperation hurdles.

Looking forward, success will depend not only on stronger laws but on institutional modernization: faster and more transparent prosecutorial processes, improved data governance, a beneficial-ownership transparency regime, and international rule-making that brings digital and non-financial assets into the transparency perimeter. India's active engagement in the OECD and G20 processes positions it to be both a beneficiary and a shaper of the evolving global framework — but domestic legal and institutional reforms are essential if those international inputs are to be converted reliably into asset recovery, fair enforcement, and strengthened public finances.

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