ECONOMIC CELL
BHARTIYA JANTA PARTY

Ways and Means to recover Indian Money stashed away in Foreign Countries

A research report

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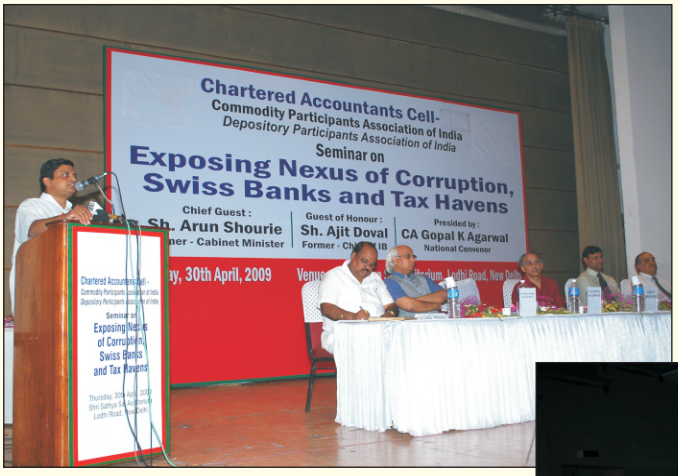
Seminar on Exposing Nexus between Corruption and Swiss Money on April 30, 2009



Gopal K. Agarwal delivering his Presidential Address

A view of professionals

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A research report

Gopal K Agarwal
Anil Sharma

ACKNOWLEDGEMENTS

The party president Shri Nitin Gadkari's encouragement and support has made it possible for us to organize this program where we have the expert opinion of renowned personalities like Prof. R Vaidyanathan, Shri Ram Jethmalani and Shri S Gurumurthy etc. on the subject. I must acknowledge the support we received from the members of our economic cell specially Shri Raj Shekhar, Shri Anil Gupta and Shri Anil Sood in this endeavor and assistance of Ms. Shiva Kumra in vetting this document. Without the efforts of Shri Anil Sharma this document could not have seen the light of the day.

This issue was first taken up by us in 2009 after Shri L. K. Advani strongly advocated the cause of recovery of stolen assets and thereafter encouraged me to follow it up. In my Presidential Address at a function in April 2009, I had committed to follow the matter and bring out a detailed document on the subject. We are happy to say that we have moved a step further in delivering what we had promised earlier.

Swami Ramdevji's crusade against corruption and illegal foreign money and my association with India Against Corruption Movement under the guidance and leadership of Shri Shri Ravi Shankarji, Shri Arvind Kejriwal and others has inspired me to move ahead in the matter.

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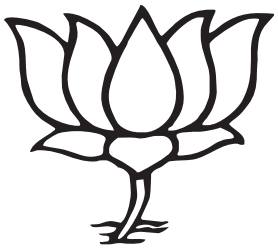

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FOREWORD

Dear friends

Recent revelations on Common Wealth Games, 2G Spectrum and Adarsh Housing Society scams and the government's failure to decisively act on them, have exposed the vulnerability of our fragile economy. Unabated corruption in the country is eating at the very roots of our national thread.

It is not long that the mood of our fellow countrymen was booming with confidence and the world was talking of resurgent India. Everything was right; a vibrant democracy, a young demography, booming service sector, developing knowledge economy, a large domestic market and a can-do spirit all around. Everybody was saying that India has arrived. We were ready to take on the world and become an Economic Super Power-a country with a vision 2020.

What went wrong? The sentiments at present are at its lowest ebb. The businessman's confidence is shaking. The world is deploring India for its high level of corruption and there is complete **Governance Deficit**. Institutions are created in the country to uphold values and check deviations, but the government is systematically demeaning each and every institution. How can the country survive in this deficit? Newer, innovative and unchecked methodologies are being evolved and adopted in conjuncture with authorities to fleece ignorant people.

Corruption is a worldwide phenomenon, but once a corrupt person comes to light anywhere around the world he is severely punished, his assets are confiscated. But in India he merely resigns and the case is entangled in a long legal battle which takes years to complete and in the end he is not convicted for lack of evidence and is left to enjoy the booty of his loot. In chapter two we have critically analysed the present institutional and legislative setup. Our anti corruption mechanism lacks teeth and is ridden with ineffectiveness.

The Society has to rise to the concept of tax payer's money. It's our money that is being stolen away. It's a drain on our national wealth. Today India is rising against corruption. Mass agitations are taking place. I see sign of similar momentum in the country as was seen at the time of late Shri Jay Prakash Narayan's crusade against the dictatorial and corrupt designs of Smt. Indira Gandhi, the then Prime Minister and leader of the Congress. Civic society is rising across all segments. The public outrage is fueled by the wide experience of corruption in daily life.

Similar developments are taking place even in foreign countries, like Red Shirt movement in Indonesia, the flight of the dictatorial King from Tunisia on account of public outrage and strong protest against Housini Mubarak in Egypt. For us an independent transparent and effective Anti-corruption agency as was established in Hong Kong in 1970 is an example to be followed.

We have to stand up and fight with a strong resolve. We have seen success in the past, nobody can stand against a mass movement. The person who gives solution to the masses always leads. He is the change agent and is a hope for the future. Let us all root out corruption from our system, build a strong anti corruption mechanism where a person found guilty will be brought to books at a fast track and will be punished severally, leading to confiscation of all his wealth. Complete transparency in the governance is the need of the hour.

The situation is worst in the arena of International Financial Flows (IFF). On an average, India is losing nearly Rupees 240 crores every 24 hours (GFI Report, The Hindu), in illegal financial flows out of the country. India can ill afford to ignore such a loss of capital. Proper laws are not in place like ratification and implementation of International Conventions to check and bring back our illicit money stashed in foreign countries. The government not only lacks the will but is actively camouflaging and shielding the guilty. The government's intention is clearly doubtful when it classifies this as a tax evasion issue instead of crime money and stolen assets of the nation. Recent spate of developments and reports as mentioned below, points out towards the menace.

Tax haven countries use feeble technical reasons to blunt a foreign government's investigation into the accounts of unscrupulous elements who have stashed away huge amounts in violation of laws. Swiss banks will hold back information on cash allegedly stashed there on technical grounds. Swiss authorities' refusal to part with the information is on the premise that the offence allegedly committed in India - in this case of not filing tax returns - is not an offence under Swiss law. A senior income tax official expressed surprise over choosing "not filing of returns" as the reason for initiating a letter rogatory to Swiss authorities. It's well known that 'not filing of returns' is not an offence under Swiss laws and therefore they are not bound to comply with the IT department's request. Supreme court has passed serious strictures on the inaction of the government.

Shri Manmohan Singh's government is completely disoriented and is actively conniving with the culprits. On coming to power he had promised to recover this money within 100 days. Not only nothing has been done, but even some information that the government has on the subject is not being disclosed on feeble secrecy commitment grounds. This is the same argument that Tax Havens use to protect the offender and to meet their respective organizations and countries vested interest.

This argument has been busted the world over. This is not merely a tax evasion issue as the government is trying to make out, but is a criminal offense and if the government had right intention and will to recover the money and stop its further flows it would have taken steps in this direction.

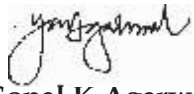
United States and many other countries have proved that graft can be tackled successfully. American courts have used such laws and found mega corruptions guilty of bribery. It has tightened accounting standards by establishing new laws. In United Kingdom also a massive public outcry finally led Britain to enact in 2010 what many now dub as 'the toughest anti-bribery law in the world'. Stiff penalties and jail terms, in conjunction with relatively clear

definitions of what constitutes malpractice make for a powerful deterrent against institutional corruption. So there is nothing to hamper our resolve to tackle the menace.

Now the way forward is to create mass awareness on the subject and to remove misgiving as being projected by the authorities that this recovery is not possible. If the work is difficult it requires a determined effort.

Keeping this in mind, we have tried to give a comprehensive roadmap, the way forward on the subject which is practical. The battle is long drawn but the goal is achievable as can be seen from the success stories as given in the annexure. We have to make it difficult to move illicit funds around the world by increasing financial transparency and stronger international cooperation. In this document we have outlined steps which need to be implemented in order to prosecute the guilty, prevent theft of assets, recover the stolen money, and ensure a continuous flow of information. Through this, if a resolve is created to move forward, we will further bring out the draft legislation and expertise required in implementation of these laws.

BJP as a political party understands the aspirations of the people of the country and is working towards meeting them. This way it will fulfill its purpose and occupy the moral and political space to lead this nation of great history and future potential.



30th January, 2011

Gopal K Agarwal
National Convener

CONTENT

EXECUTIVE SUMMARY

CORRUPTION IN INDIA

India has registered a significant economic growth rate over the last 63 years. Particularly, in recent years the growth rate of India has been approximately twice the world average. The economy of India is the eleventh largest in the world by nominal Gross Domestic Product (GDP) and the fourth largest by Purchasing Power Parity (PPP) (Source: World Economic Outlook Database, April 2010, IMF).

However, India's growth story must be tempered with caution. As the Economic Survey 2009-2010 rightly presents "India's growth performance over the last couple of decades or so has been a subject of a great deal of scholarly enquiry, as well as a cause for celebration. A measured optimism, in this regard, would be understandable but a spillover into unbridled euphoria would not. The case against complacence resides in the large magnitudes of both poverty and inequality which coexist with growth." (Source: Economic Survey 2009-10, Pp 23).

A natural question arises: How has such growth with skewed development come about? Underlying this underperformance is the phenomenon of pervasive corruption in high places and the concomitant illegal flight of scarce capital from India.

ANTI CORRUPTION MEASURES AND THEIR EVALUATION

India has number of anti-corruption legislations namely Prevention of Corruption Act, Prevention of Money Laundering Act, Foreign Contribution Regulation Act, Right to Information Act. Indian Penal Code, it also has provisions relating to prosecution of corrupt Government Officials. Double Tax Avoidance Agreements with various countries under the Income Tax Act also deal with information on tax evaders.

There is number of anti corruption institutions set up in India. Central Vigilance Commission and Central Bureau of Investigation are working at Central Government level whereas State Vigilance Commissions and Lokayuktas are functional at state levels. An independent judiciary system and Central Information Commission and Public Information Officers at each Department level of all states and Central government offices are the most important segment of anti corruption set up in India. In addition to the above, Serious Fraud Investigation Office under the Ministry of Corporate Affairs and Financial Intelligence Units under Ministry of Finance are also looking into financial and economic aspects of corrupt practices. In addition there are number of investigating agencies under

the Revenue Department of the Ministry of Finance looking into evasion in direct taxes, indirect taxes, forex dealings and illicit drug trade.

The institutional and legal framework for addressing the problem of corruption in India is established. However, according to Transparency International and Global Financial Integrity, this setup suffers from lack of coordination between the different actors, and efficiency is often reduced due to conflicting mandates. Key institutions are often inadequately staffed and underfunded and end up struggling to maintain their autonomy from outside political forces, even though this autonomy is legally mandated. Their activities are generally not proactive and preventive but are instead focused on investigating reported or suspected acts of corruption. In addition, there is a general sense that the big fish has successfully avoided investigations and convictions. Additional key anti-corruption legislation have been held up for years, sometimes decades, leading to a perceived lack of political will to tackle corruption at its highest levels.

India's ineffective anti-corruption strategy can be attributed to the lack of political will of its leaders and its unfavorable policy context, which has hindered the enforcement of the anti-corruption laws. This is more evident when we see low per capita expenditure and least favorable staff-population ratio of these institutions. Though there are numerous anti-corruption institutions and legislations in place, their efforts are diluted due to non enforcement or selective enforcement of anti-corruption laws.

INTERNATIONAL SCENARIO ON ANTI CORRUPTION MOVES

Increased opportunities for transnational corruption have been unintended consequences of rapid globalization and economic liberalisation in the past two decades. Transnational corruption manifests in various forms and it could range from bribes and kick backs in international business transactions to using the channels of off-shore banking facilities and technological aids to either launder proceeds of corruption, or to simply park domestically extracted bribes in foreign destinations.

Jurisdictional limits often cause insurmountable barriers in criminal justice responses to corruption. While national authorities are expected to respect the principles of sovereignty of the requesting country, their efforts get impeded by expediencies of diplomatic relations and by divergence of legal systems and investigative practices. Therefore, when corruption transcends national boundaries, a greater degree of domestic inter-agency coordination and enhanced international cooperation is needed.

Recognising the importance of reinforcing national efforts with international cooperation instruments such as mutual legal assistance, extradition, tracing, freezing and confiscation of assets, international and regional conventions such as the UNCAC and OECD Anti Corruption Initiative for Asia and Pacific were put in place.

Keeping in mind the theft of public assets from developing countries, Stolen Asset Recovery (StAR) Initiative was launched in 2007. Apart from these measures, it also cites the case studies of the successful anti-corruption initiatives undertaken by some countries. By strengthening political accountability and transparency through further institutional reforms, they have been able to launch effective anti-corruption programs.

SUGGESTIONS ON RECOVERY MECHANISM AND OTHER ANTI-CORRUPTION MEASURES

Bringing back Indian money stashed in foreign banks/countries is a tedious process which requires a strong political will, vigorous efforts to get international cooperation, heavy cost and substantial time. We should not be expecting results immediately but we have to take some very important decisions right now. Moreover, the issue is not only of bringing back Indian money already stashed away in foreign banks but also of putting checks and balances in place to stop its further flight from India.

Our target should be to confiscate the money generated through corrupt and criminal activities (such as bribes taken by People in Power, civil servants and others or proceeds of crime relating to illegal drugs, human and arm trafficking, extortion, protection money and money generated for and through organised crimes) and the same should be brought back and used for developmental work and social welfare schemes. Due taxes, interest and penalties must be recovered from tax evaders who have kept the money outside India in tax heaven/foreign jurisdictions offering secrecy of ownership information. All the persons involved must be prosecuted under the legal system of our country, considering such action as criminal activities.

The process of bringing back Indian money from foreign banks involves steps such as identification, verification, confiscation, international mutual legal assistance, litigation in foreign jurisdictions and devising and repatriation mechanism. Since international mutual legal assistance is the most important, India must join the world movement on anti corruption by ratifying/acceding various Conventions namely United Nations Convention on Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions etc. Secondly, we also have to amend our respective legislations to make them in line with requirements/obligations of these Conventions.

We should take proactive approach for taking benefits of experience of various governmental and non-governmental agencies working towards recovery of stolen assets. Technical assistance under StAR Initiative would not only help us to understand the nuances of asset recovery process but also provide an opportunity to develop in-house skills.

Entering into Double Tax Avoidance Agreements with tax heavens/secret jurisdictions would help us in getting information on identification of persons holding secret accounts and the quantum of money held by them. A more vibrant Financial Intelligence Unit with larger skilled manpower is very vital in interacting with other FIUs for collecting, collating and analysing information from suspicious transaction reports. Mandatory submission of information by way of STRs may be made applicable to other players of the financial systems including tax consultants. Even scope of 'suspicious transaction' itself should be enhance based on the experience gained till date.

Experience of Americans in using John Doe Lawsuits in getting names of persons having bank accounts in tax haven and other such jurisdictions is quite encouraging. In fact US have recently amended it further to make it more effective and implementable. We should also bring such provision in our related legislation.

India is yet to make law on bribery in the private sector, making bribery a criminal offence when committed intentionally in the course of carrying on business or profession. It has been noticed that the business entities in India have used tax havens for tax evasion. USA has recently passed an Act namely 'Stop Tax Haven Abuse Act' to firmly deal with such misuse by US citizens. We should also bring in similar legislation or make amendment in present Income Tax Act to address the problem of abuse of tax havens.

It is also suggested that a single agency, incorporating skilled manpower in the subject, from existing institutions be formed to deal with issue of flight of capital from India. Similarly, financial system regulators in India namely Reserve Bank of India and Security Exchange Board of India (SEBI) have to put in place regulations for collection of relevant and correct information and its submission to the specialized agency like FIU on a timely basis.

1 CORRUPTION IN INDIA

1) NATURE AND LEVEL OF CORRUPTION

The problem of corruption is an old one. The history of corruption in post-independent India starts in 1948, when the then Indian High Commissioner in London, V K Krishna Menon's name cropped up in a scandal where the Government of India had placed an order for procuring 2000 jeeps with a dubious London based firm. While most of the money was paid beforehand, only 155 jeeps were delivered.

In 1958, Finance Minister T T Krisnamachari, Finance Secretary H M Patel and LIC Chairman L S Vaidyanathan were exposed in a scandal involving LIC's investment of Rupees 1.25 crores in six companies established by Haridas Mundhra. The Finance Secretary was indicted, Mundhra was jailed and T T Krishnamachari resigned.

In 1976, in the face of declining oil prices, the Indian Oil Corporation awarded a Rupees 2.2 crore contract to the Hong Kong based Kuo Oil Company to take future deliveries at current prices. The Indian government suffered a huge financial loss as a result.

In 1980, Petroleum Minister P C Sethi and Petroleum Secretary H N Bahuguna were accused in the Thal Vaishet case. An engineering consultancy contract for setting up the fertilizer project in Thal Vaishet was awarded to the company, Haldor Topsoe in violation of norms. The Italian company Snamprogetti had approximately 50 percent of shares in Haldor Topsoe and it was represented in India then by Ottavio Quattrocchi.

In 1981, Maharashtra Chief Minister, A R Antulay was forced to resign when the then Bombay High Court ruled that he had illegally required builders in Mumbai to make donations to the Indira Gandhi Pratibha Pratishthan, a trust fund that he had established and controlled, in exchange for receiving more cement than the government quota allowed them to buy.

In 1987, the then Prime Minister, Shri Rajiv Gandhi and others were linked to a Rupees 64 crores payoff for the 155mm howitzer gun deal from the Swedish firm Bofors.

In the post-liberalisation period, corruption became a pervasive aspect of modern India due to proliferation of economic activities coupled with rapid increase in population. Ever since the Harshad Mehta scandal came to light in 1991, the number and magnitudes of sums involved in corrupt deals has registered a quantum jump. The C R Bhansali scam, the Fodder scam, Ketan Parekh scam, the UTI scam, the Global Trust scam, the Telgi scam, the

IPO scam, the Madhu Koda scam, the Satyam scam - the aforesaid list is only indicative and by no means exhaustive; all these frauds involve gigantic amounts.

The year 2010 has been particularly notorious in terms of the scams that have surfaced to light. The biggest scam that cropped up in 2010 and the largest scam in Indian history was the Rupees 1.76 lakh crores 2G (second generation) spectrum allotment scam. Union Telecom Minister A. Raja was forced to resign on November 14 as a result.

The Commonwealth Games (CWG) cost shot up by 17.5 times from the original estimate and cost Rupees 70,000 crores. The 2010 games were the most expensive Commonwealth Games ever. Investigations into the CWG scam have unearthed dubious bank accounts, fraudulent deals and arrests of officials. The Chairman of the Organising Committee, Suresh Kalmadi, has been forced to resign.

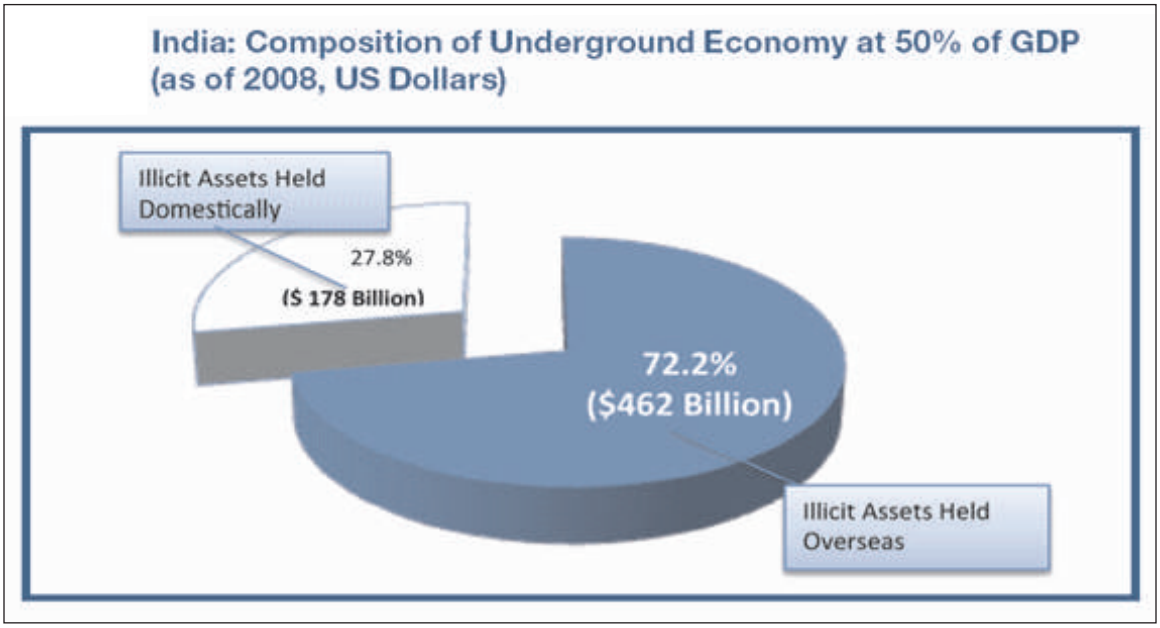
The Adarsh Cooperative Housing Society scam exposed the corrupt nexus amongst politicians and civil servants in order to grab prime land in Mumbai. The society had set up an illegal multistoried building in Mumbai. It was originally intended for the Kargil war widows, but was eventually occupied by the elites and the well connected. Chief Minister Ashok Chavan was forced to resign as the beneficiaries included three of his very close relatives.

The IPL-Kochi franchisee scam claimed the scalp of Union Minister of State for External Affairs, Shashi Tharoor. He had to quit after it was discovered that Rupees 70 crores worth 'sweat equity' was given free of cost to his then 'close friend' and now wife, Sunanda Pushkar.

The Housing loan scam saw the CBI arresting LIC Housing Finance Chief Executive Ramachandran Nair and seven others from the LIC and state owned banks. With the non-banking finance company, Money Matters acting as middleman, Nair and the bank officials had been sanctioning large loans to builders in return for bribes.

Other data also point to a stiff and increasing incidence of corruption in the country. Transparency International (TI), a global NGO established in 1993 and dedicated to promoting a corruption free world, evaluates countries on the basis of an annual Corruption Perceptions Index (CPI). TI ranked India 87 overall in 2010, worse off than all developed countries and even some countries in Africa.

A recent Global Financial Integrity (GFI) report suggests that in India, the underground economy is closely tied to illicit financial outflows. The total value of illicit assets held abroad represents about 72% of the size of India's underground economy which has been estimated at 50% of India's GDP. (Source: Dev Kar "The Drivers and Dynamics of Illicit



Financial Flows from India: 1948-2008" Table 8, pp67) Clearly, the fact of corruption is undeniable.

2) TAX HAVENS AND INDIAN MONEY STASHED AWAY IN FOREIGN BANKS

The Organisation for Economic Co-operation and Development (OECD) identifies three key factors in considering whether a jurisdiction is a tax haven:

1. **No or only nominal taxes.** Tax havens impose no or only nominal taxes (generally or in special circumstances) and offer themselves, or are perceived to offer themselves, as a place to be used by non-residents to escape high taxes in their country of residence.

2. **Protection of personal financial information.** Tax havens typically have laws or administrative practices under which businesses and individuals can benefit from strict rules and other protections against scrutiny by foreign tax authorities. This prevents the transmittance of information about taxpayers who are benefitting from the low tax jurisdiction.

3. **Lack of transparency.** A lack of transparency in the operation of the legislative, legal or administrative provisions is another factor used to identify tax havens. The OECD is concerned that law should be applied openly and consistently, and that information needed by foreign tax authorities to determine a taxpayer's situation should be made available. Lack of transparency in one country can make it difficult, if not impossible, for other tax authorities to apply their laws effectively. 'Secret

rulings', negotiated tax rates, or other practices that fail to apply the law openly and consistently are examples of a lack of transparency. Limited regulatory supervision or a government's lack of legal access to financial records is contributing factors.

However, the OECD found that its definition caught certain aspects of its members' tax systems (most developed countries have low or zero taxes for certain favored groups). Its later work has therefore focused on the single aspect of information exchange. This is generally thought to be an inadequate definition of a tax haven, but is politically expedient because it includes the small tax havens (with little power in the international political arena) but exempts the powerful countries with tax haven aspects such as the USA and UK.

In deciding whether or not a jurisdiction is a tax haven, the first factor to look at is whether there are no or nominal taxes. If this is the case, the other two factors - whether or not there is an exchange of information and transparency - must be analysed. Having no or nominal taxes is not sufficient, by itself, to characterise a jurisdiction as a tax haven. The OECD recognises that every jurisdiction has a right to determine whether to impose direct taxes and, if so, to determine the quantum of taxes.

A Factsheet on Illegal Financial Flows (IFFs) from India

Nature and Dimensions of IFFs: IFFs are, by and large, a measure of corruption in a country; after all, the corrupt eagerly strive to hide their ill-gotten wealth through scams, bribery and kickbacks in deals away from the arms of law and consequently, take their funds to destinations where domestic law would not apply and where they would be assured secrecy. Regarding Indian money stashed in foreign banks, the Supreme Court Bench said "It is pure and simple theft of the national money. We are talking about mind-boggling crime. We are not on the niceties of various treaties…We are talking about the huge money. That is the plunder of nation."

'Tax havens' and 'Offshore Financial Centers (OFCs)' have served as ideal destinations for parking such ill-gotten wealth. However, the definitions of tax havens and OFCs have been disputed for years and therefore, clarity has not been arrived at in terms of identifying the exact number of places which facilitate such illegal financial flows.

Tax Justice Network (TJN), an independent organization dedicated to research, analysis and advocacy of issues related to tax regulation, has come up with an omnibus term for such destinations where illegal financial flows are parked. Calling them 'secrecy jurisdictions', TJN defines them, as 'places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain.' This regulation is designed to undermine the legislation or regulation of another jurisdiction. To facilitate its use, secrecy jurisdictions also create a deliberate, legally backed veil of secrecy that

ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so. (Source: http://www.secrecyjurisdictions.com/). On the basis of painstaking research, TJN has identified 60 'secrecy jurisdictions' in September 2009, some of which like Netherlands, Belgium, Austria, UK and parts of the USA are not conventionally considered 'tax havens'; TJN's research reveals that they are.

Recent developments surrounding IFFs: As long as the Western economies were doing well, the entire world had to be reconciled to such 'secrecy jurisdictions'. However, the recent global economic crisis and the collapse of their giant financial institutions made US and several other European countries change their attitude and join hands to make a determined effort to have banking secrecy laws in such countries changed.

Meanwhile, a study authorized by the Global Financial Integrity (GFI) and authored by Dev Kar and Cartwright Smith that was published in December 2008 found that India lost $ 27.3 billion annually in Illicit Financial Flows during 2002-2006, making it the sixth largest exporter of illicit capital in the world. This meant a total loss of $ 137.5 billion for the entire five year period. (Source: Dev Kar and Devon Cartwright-Smith. Dec 2008. *Illicit Financial Flows from Developing countries: 2002-2006*. Available at www.gfip.org)

In the run up to the 2009 Lok Sabha polls, Shri L K Advani first raised the issue of Indian money stashed in tax havens abroad. On the basis of the aforesaid GFI authorized study, Shri Advani said that Rupees 25 lakh crores were parked in such secret jurisdictions. He also constituted a 4 member Task Force to examine the issue in detail and the Interim Recommendations of the BJP Task Force suggested a 6 point global strategy and a 7 point national strategy to bring back Indian funds illegally stashed abroad.

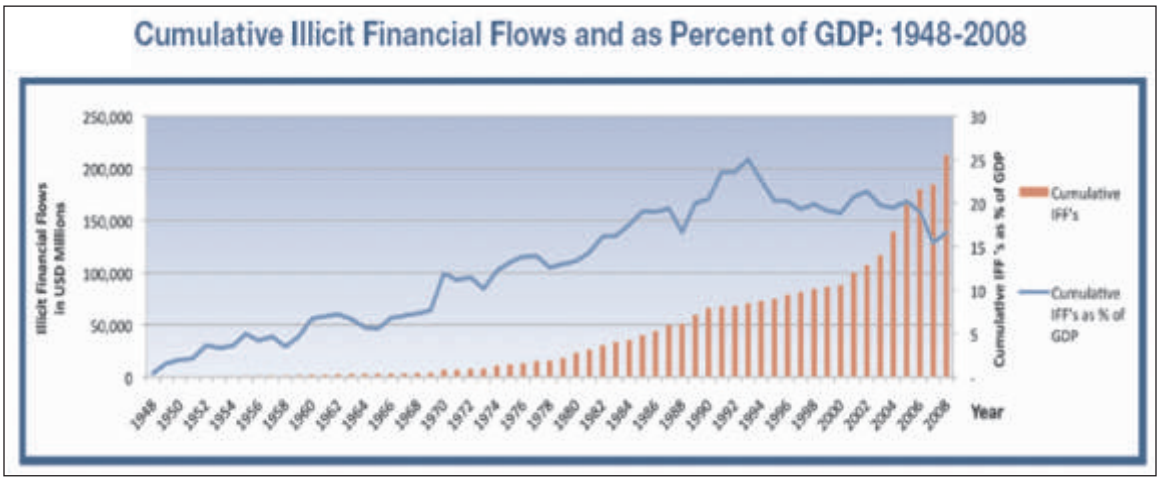
The global strategy revolves around India making sufficient efforts in shaping public opinion towards showing that India is concerned about the issue. For instance, the Report states " when Germany and France took the issue of secret banks and tax havens in the G-20 preparatory meeting at Berlin in February this year (2009) India kept silent for no conceivable reason. Again when the two nations supported by the UK and USA campaigned against secret banks and tax havens in the G-20 meeting at London in April (2009), India surprisingly kept mum. Lastly, when the German government offered to open to all nations the secret names of the account holders in LGT bank in Liechtenstein, India did not effectively work to get the names of several Indians believed to be in the secret records."

The national strategy focused on providing adequate legislative support for the purpose of recovering illegal wealth. The report recognized that "while the recovery of Indian monies stashed away is largely to be made at the global level there has to be proper statutory and

institutional infrastructure within the nation to handle the problem of flight of Indian monies to tax havens and secret banks and also to take measures to bring back the Indian wealth stashed abroad." The report further states "Legislations to enable the government to initiate legal action and simplify procedures to take action against people who have stashed their money in tax havens should be enacted."

Chartered accountants cell of BJP under its National Convener Shri Gopal K Agarwal also released a discussion paper at a convention in New Delhi, and promised to bring out a detailed strategic document on the subject.

Global Financial Integrity (GFI) Report on IFFs from India: In November 2010, GFI published the most comprehensive report on IFFs from India, entitled "The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008" authored by Dev Kar. (Source: available at www.gfip.org)



The report states that from 1948 to 2008, India lost a whopping $213 billion in illegal capital flight. If accumulated interest on this were to be added, this figure would touch a mind boggling $462 billion. The report adds a caveat "in all likelihood, this estimate is significantly understated". The total capital flight is approximately equal to 16.6 percent of India's GDP as of yearend 2008.

Interestingly, the report states that trade liberalization and general deregulation has led to a greater outflow of illicit funds from India. In real terms, the outflows of illicit capital accelerated from an average annual rate of 9.1 percent during 1948-1990 to 16.4 percent during 1991-2008. So for the post reform period, "there are clear indications that faster economic growth seemed to go hand-in-hand with larger, not lower, illicit flows and a worsening income distribution." High Net worth Individuals and Private Companies were found to be the primary drivers behind the illicit capital flows from India.

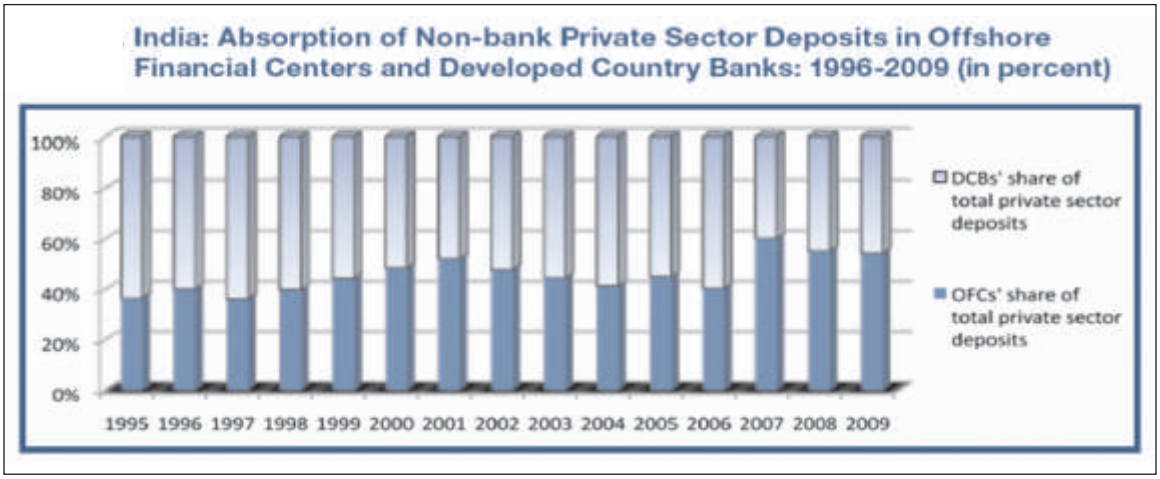
Supreme Court Litigation on IFFs: Pending before the Supreme Court of India is a writ petition filed by Senior Advocate Shri Ram Jethmalani and five other eminent citizens that aims at forcing government to bring back India's wealth stashed away illegally in tax havens overseas. When the matter came up for hearing in January 2011, the apex Court sternly admonished the Solicitor General Gopal Subramaniam when he said that the Government had received from the German government all details about the monies deposited by Indian citizens in Liechtenstein Bank but the Government of India did not wish to make these details public.

NDA's letter to the Prime Minister on IFFs: Taking stock of the vital issue of illegal capital flight from India, the NDA wrote a letter to the Prime Minister in January 2011. A critical paragraph in the letter reads as follows: "The investigative report in a Swiss journal, 'Schweizer Illustrierte' dated 19/11/1991 has named 14 global leaders of the Third World countries with accounts in Switzerland. The name of a former Indian Prime Minister was also mentioned. This report has never been denied. Some startling revelations in a book "The State within a State - The KGB hold on Russia in past and future" by Dr. Yevgenia Albats mentions the benefits received by a former Prime Minister of India and his family, accruing from commercial dealings with the Soviets." (Source: Shri L K Advani's blog dated 16 January, 2011. "*Indian Wealth Abroad: S.C pulls up GOI*".)

3) IMPACT OF IFFs AND CORRUPTION ON INDIAN ECONOMY

Economic impact of IFFs: Ill-gotten wealth through bribery, kickbacks and scams has a deleterious effect on both the society and the economy. But when this illicit wealth is stashed away abroad in secrecy jurisdictions, the consequences are far more damaging. The BJP task Force's report states, "Economists call this the flight of capital. This is Indian people's money stolen away from them. There is a difference between black money within the country and the black wealth shifted out of India. While both are bad and are prejudicial to the national economy, the black wealth stashed out of India represents capital flight from India. It is a total loss to the nation. On black money the government and the people lose the tax. But in capital flight the country itself loses the money. So capital flight is more dangerous. And now besides economic prejudice, it causes high security risk."

India has lost a total of approximately 20 lakh 85 thousand crore rupees in illegal flight. Assuming a tax rate of 30 percent, the nation has lost roughly Rupees 6 lakh 25 thousand crore rupees in taxes. In other words, the Government of India instead of facing persistent deficits would have had surpluses. Enough resources would have been available for investment in social and physical infrastructure like schools, colleges, health centers and hospitals, roads, power projects and irrigation systems. This hike in investment would



have created jobs for millions of youth in the nation and led to a step-up in the economic growth. Clearly, the fiscal crisis, the problems of infrastructure and employment are inextricably linked with capital flight from the country. In a nutshell, illegal capital flight has serious macroeconomic consequences.

The illegal capital outflows generated from kickbacks, frauds and bribery have severe microeconomic consequences also. A massive telecommunication scam may ultimately lead to a breakdown of telephone services; a huge sports scam may lead to poor quality of sports infrastructure in the country, and a gigantic housing scam may in the ultimate analysis lead to abysmal housing construction. Clearly, capital flight can have disastrous effects on implementation at the micro level.

Illegal capital flight also leads to growing inequalities in asset and wealth distribution, thus leading to social discontent. Shadow financial firms and disguised corporations situated in secrecy jurisdictions enable shifting of capital out from India and then round trip them back to India for investments.

Illegal capital flight ultimately leads to less assistance from international organizations and donor countries as there is no guarantee that the funds they give would be used optimally and for the purpose for which they had been given.

Capital flight not only poses a challenge for economic development but also presents grave national security risks. In fact, former National Security Adviser, M K Narayanan had pointed out that funds which were allowed to flow from secret sources into India's stock markets had been used for terror purposes. A June 2010 report by the Paris based Financial Action Task Force (FATF) has noted that India faces many risks emanating from money laundering activities by terror groups.

Moreover, were the entire $462 billion of illegal capital flows to be repatriated to India, our country could get rid of all the external debt it has contracted over the years. As per the Economic Survey 2009-10, India's external debt stood at approximately $224 billion as at end 2008. After paying off the foreign creditors, the rest $238 billion could be utilized for a massive programme of poverty alleviation and rural renewal.

A repatriation of illegal capital would also strengthen the value of the Indian rupee making imports cheaper (albeit exports would get dearer!) and may also lead to a lower rate of inflation because of cheaper imports.

Empirical literature on corruption and its impact: The empirical literature on corruption was pioneered by Paolo Mauro (1995) (Source: Paolo Maoro. 1995. *Corruption and Growth.* Quarterly Journal of Economics 110(3): 681-712) who established the impact of corruption on growth and investment for a cross country data set and found a significant negative association between the corruption index and the investment rate or rate of growth. Since then Brunetti and Weder (2003) (Source: Aymo Brunetti and Beatrice Weder 2003. *A Free Press is Bad News for Corruption*. Journal of Public Economics 87(7-8)) and Meon and Sekkat(2005) (Source: Pierre-Guillaume Meon and Khaled Sekkat. 2005. *Does Corruption grease or sand the wheels of Growth*. Public Choice 122(1): 69-72) have reported similar findings.

Interestingly, a recent study by Keshav Choudhary (2010) demonstrates the pernicious impact of corruption on growth for India. Using data for 2000-2005, Choudhary (Source: Keshav Choudhary. 2010. *The Impact of Corruption on Growth: An Empirical Analysis in the Indian Context*. Asian Journal of Public Affairs. Vol 3 No.2 (67-80)) finds evidence that "corruption has had a significant negative impact on economic growth in India and the adverse impact on investment is a plausible channel through which this impact occurs." The study thus puts "the speculation on the impact of corruption on firm empirical ground."

2 ANTI-CORRUPTION MEASURES - LEGISLATIONS AND INSTITUTIONS

1) VARIOUS LEGISLATION ADDRESSING ANTI CORRUPTION MEASURES

Prevention of Corruption Act

The intent and purpose of introduction of PCA is very good but on ground Zero, the corrupt have gone scot free as the prosecution rate is abysmally low. The intent to improve the prosecution is lacking and so is the mechanism of gathering information through informers. It is matter of record that once a complaint is filed against corrupt officers, the Investigating Officers convey themselves to the officer accused of corruption, collect their share of booty and the matter is killed by providing loop holes. Except for a few high profile cases, it is very difficult to prove anybody's involvement in corrupt practices, be it Mr. A.R. Antulay or Mr. Bhajan Lal's case. None of the Politicians/Bureaucrats accused of amassing wealth through illegal means have been punished till date.

The parallel economy of collection of bribes from over loaded trucks by issuing monthly stickers by the Regional Transport Officers of each State and its distribution among officers from various enforcement agencies is done with utmost honesty. We do not find any case in any of the States, where the State Government has initiated any steps in curbing this dangerous practice.

The sale of steel scrap and liquor without payment of taxes and duties from one State to another State where each truck passes through so many barriers is classic example of organized mafia with active connivance of the officers. How many officers have been put behind the bars is anybody's guess.

All this leads to the conclusion that the mechanism of gathering information and thereafter initiation of proceedings against the erring officials suffers from serious draw backs and merits complete overhaul of the system.

Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 (PMLA 2002) and subsequent amendments in the year of 2005, mandates that in addition to client identity verification, banks and financial institutions need to maintain and furnish records to the various regulatory authorities as defined by the Indian government. It also allows the regulatory authorities to freeze, seize and confiscate suspect accounts.

PMLA 2002 also provides for mutual legal assistance in India by making enabling provisions for agreements with foreign countries to enforce this Act; assistance to a

contracting State in the investigation of an offence; reciprocal arrangements for processes; and assistance for transfer of accused persons and attachment, seizure and confiscation of property in a contracting State or India. In addition, the Anti-Organized Crime Law stipulates mutual assistance in the execution of court orders for confiscation, collection of equivalent value and securance in criminal cases occurring in foreign countries and this law also stipulates the provision of information regarding suspicious transactions to foreign authorities.

It is concluded that joint efforts made by each country, in developing a reliable strategy of a vigorous domestic enforcement of law as well as international cooperation, is the most effective means to cope with problems related to economic crime, including money laundering. It would also be beneficial to adopt some of the following measures:

1. First and foremost it is important that the number of state parties to the TOC convention should be increased.

2. Given the fact that the TOC convention gives due consideration to diversities of the legal and financial system of member states and allows each state party to exercise discretionary power to a certain degree, it is feared that those committing economic crimes, including money laundering, may target countries with lenient legal provisions and international criminal organizations may end up setting a strong foothold in these countries, even if every State accedes to the Convention. In order to dispel such concerns States Parties should be encouraged to apply article 34 paragraphs 3 of the TOC convention which stipulates each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

3. Borderless criminal justice is essential in order to deal with borderless economic crimes including money laundering.

4. It should be recognized that information sharing is important in order to suppress cross-border crimes. Items of information to be shared are as follows: suspicious transaction reports, information relating to offences and suspects modus operandi and others. Despite some countries' efforts to exchange information on economic crimes, including money laundering, it has become more evident that information sharing instead of information exchange is more necessary.

5. There should be a unified standard for Criminalization of common criminal offences occurring in each country. Authority for universal jurisdiction on the above offences should be granted to all countries.

6. In the local legislation, the legal criteria applicable to an increase in scope of predicate offences, which would enable the successful combating of organized economic crime, including money laundering should be adopted.

7. Viable practices on confiscation and seizure measures, through the renewed legal concepts that enhance the powers of prosecuting authorities should be established.

8. The financial institutions, telephone carriers and internet service providers should take responsibility for preventing their services from being misused as criminal tools.

The Foreign Contribution (Regulation) Act, 2006

The Foreign Contribution (Regulation) Act, 2006 replaces the Foreign Contribution (Regulation) Act, 1976. The original Act (FCRA) was established to regulate the acceptance and utilization of all foreign funds through donations or gifts. According to the Ministry of Home Affairs, FCRA 2004-05 Annual Report, 'The primary purpose of this Act is to ensure that foreign contribution is utilized for genuine activities without compromising on concerns for National Security.' The new Act tightens restrictions on foreign contribution primarily to the voluntary sector and political organisations. Highlights of the Act include:

a) The Act seeks to regulate the acceptance and utilization of all foreign funds through donations, gifts or grants.

b) The 1976 Act lists a number of organisations and individuals that are prohibited from accepting foreign contribution. The Bill adds organisations of a "political nature" and electronic media organisations to the list.

c) The Act requires all persons with a "definite cultural, economic, educational, religious or social programme" to register under FCRA to accept foreign contribution. The central government may deny, suspend or cancel certification under certain conditions.

d) The Act mandates that organisations must renew FCRA certification every five years. Both the application and the renewal carry a fee.

e) The Act allows the central government to conduct separate audits for FCRA certified organisations and grants it the power of search and seizure.

The Act has still not been brought into force. In any case some inherent lacunas in it would make it an ineffective legislation, namely:

a) Though the stated objective of the Act is to strengthen internal security, it addresses only the voluntary sector and only foreign funding. This constitutes less than one per cent of gross inflow of foreign funds into India.

b) Many of the objectives of the Act are met by other laws in force such as the Unlawful Activities Prevention Act, 1967, the Prevention of Money Laundering Act, 2002, the Foreign Exchange Management Act, 1999, and the Income Tax Act, 1961, thereby leading to the problem of duplicity in law.

c) The new Act prohibits all organisations of a "political nature" from receiving any foreign contribution. It gives the central government powers to classify any organisation in this category but does not provide any guidelines to define organisations of a "political nature."

d) The FCRA registration process under the Act confers a number of discretionary powers to the authorised officer.

e) There are a number of terms in the Act including, "foreign source," "foreign hospitality," and "speculative business" that either lack clarity or are not defined.

Right to Information Act

The Right to Information Act introduced by the State Governments and the Central Government is a step in right direction but its implementation has been marred by controversies since inception. Those who had been instrumental in scuttling information during their tenure as Officers in various departments have been made the Information Commissioners. Thus, they have been gifted a retirement berth.

The efforts by the Government are on to make RTI redundant by introducing limit on number of words. The Judiciary has already scuttled RTI by levying huge fee and carving out exceptions.

The scare of amendments to the Right to Information Act has made a habit of rearing its head every so often. In a recent letter to an RTI activist, the Department of Personnel and Training has confirmed the central government's intention to overhaul the 2005 Act, of course, with the now-familiar caveat that the process would include consultations with the stakeholders. In the time-tested manner of governments and bureaucracies, the department is upfront about some of the amendments while deliberately obfuscating the nature of some others. The door is to be shown to applications deemed to be "frivolous or vexatious." Section 8 of the Act, which prescribes exemptions to the Act, could be amended to "take care of the sensitivity of the office of the Chief Justice of India" as well as to "slightly modify the provision about disclosure of cabinet papers." Therefore, the office of the CJI will enjoy full immunity. Cabinet papers currently being processed are already exempted from scrutiny under Section 8. However, the bar abates once a Cabinet decision has been taken. Undoubtedly, therefore, the "slight" modification hinted at in the letter is aimed at making Cabinet decisions permanently inaccessible and opaque. Another amendment

under consideration could disallow single-commissioner Information Commission benches. If that happens, the disposal of cases could slow down, rendering the Act ineffective.

Then there is the matter of "frivolous or vexatious" applications. Any government department will naturally be vexed by an application that seeks to expose misconduct or corruption. Under a future version of the Act, all queries relating to the awards could be deemed "vexatious." It is true that the RTI is not always approached in the public interest; for example, there may be a disproportionate use of the Act by insiders, those within officialdom, to pursue their narrow career interests or even personal agendas. But this cannot be an excuse to dilute or degrade an Act that is recognised as being among the best in the world. At a workshop held recently to assess the RTI environment in South Asia, India was held up as model. It would be a great pity if the government was allowed to get away with the retrogressive amendments it has in mind.

Provisions of Indian Penal Code

The Indian Penal Code was introduced by the British Government in India in 1860 and since then no effort has been made to amend, modify or replace the outdated and archive law farmed by the Britishers.

The IPC suffers from serious deficiencies as a consequence to which the prosecution suffers serious setback. Before filing charge sheet against a Public Servant, sanction from the Government is required (under Section 197 of Criminal Procedure Code). This means that none of the cases pending would succeed as the entire proceedings against the corrupt officers' stand vitiated because of substantial delay.

Further, in some cases the FIR/case has to be registered within three years from the date of commission of offence failing which any action initiated after expiry of period of limitation is barred.

Once the proceedings are initiated by the Court, there is no time limit for completion of Trial. That's the precise reason as to why the proceedings continue for years after year without any result as a result of which the corrupt officers continue to reap the benefit of position.

Also, lack of trained Police Force and will to impart professionally trained Police Officers has seriously affected the prosecution. Therefore, there is not only a need to replace the outdated archive IPC but also to induct professionals in the Police Force, train them and then permit them to implement the law.

Double Tax Avoidance Agreements (DTAA's)

The Central Government, acting under Section 90 of the Income Tax Act, 1961 has been authorised to enter into DTAAs with other countries. The object of such agreements is to evolve an equitable basis for the allocation of the right to tax different types of income between the 'source' and 'residence' states ensuring in the process tax neutrality in the transactions between residents and non-residents. Tax treaties serve the purpose of providing protection to tax payers against double taxation and thus preventing the discouragement which taxation may provide in the free flow of international trade, international investment and international transfer of technology.

Another important feature of tax treaties is the existence of a clause providing for exchange of information between the two contracting States which may be necessary for carrying out the provisions of the agreement or for effective implementations of domestic laws concerning taxes covered by the tax treaty. Information about residents getting payments in other contracting States necessary for proper assessment of total income of such individual is thus facilitated by such agreements.

The Central Government has so far entered into comprehensive agreements with 75 countries. Recently, India requested 65 nations with whom the government has DTAAs, to revise the existing article on exchange of information to make it more effective and remove the secrecy clause.

2) VARIOUS ANTI CORRUPTION INSTITUTIONS AND AGENCIES AND THEIR EVALUATION

Central Government Level

At Central Government level, we have Central Vigilance Commission, Departmental Vigilance and Central Bureau of Investigation. CVC and Departmental Vigilance deal with vigilance (disciplinary proceedings) aspect of a corruption case and CBI deals with criminal aspect of that case. CVC is the apex body for all vigilance cases in Government of India.

Central Vigilance Commission (CVC)

The Central Vigilance Commission is the apex body that advises Central Government in cases involving corruption by the officers. It functions through Skeleton staff at its disposal and also with the help of the Central Vigilance Officers posted in the Departments/Ministries, who are drawn from the same Department/Ministry. It supervises Central Bureau of Investigation in cases related to Prevention of Corruption Act, 1988 and cases under Criminal Procedure Code against public servants. Though it is considered as premier organization which is mandated to control vigilance activities for

more than 1500 Central Government Departments some of which have huge manpower deployment in the field formation like Income Tax, Central Excise, Railways, Customs, Public Sector Undertakings, it has miniscule manpower. CVC can recommend action to be taken against corrupt officers. However, the recommendations by the CVC are not binding on the government.

- CVC depends on the vigilance wings of respective departments and has to forward most of the complaints for inquiry to them. While it monitors the progress of these complaints, the complainants are often disturbed by the ensuing delay. It can directly enquire into complaints on its own, especially when it suspects motivated delays or where senior officials could be implicated. But given the constraint of manpower such number is really small.
- CVC is merely an advisory body. Central Government Departments seek CVC's advice on various corruption cases. However, they are free to accept or reject CVC's advice. Even in those cases, which are directly enquired into by the CVC, it can only advise government. CVC mentions these cases of non-acceptance in its monthly reports and the Annual Report to Parliament. But these are not much in focus in Parliamentary debates or by the media.
- CVC cannot direct CBI to initiate enquiries against any officer of the level of Joint Secretary and above on its own. The CBI has to seek the permission of that department, which obviously would not be granted if the senior officers of that department are involved.
- CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary matters.
- It does not have powers over politicians. If there is an involvement of a politician in any case, CVC could at best bring it to the notice of the Government. There are several cases of serious corruption in which officials and political executive are involved together.
- It does not have any direct powers over departmental vigilance wings. Often it is seen that CVC forwards a complaint to a department and then keeps sending reminders to them to enquire and send report. Many a times, the departments just do not comply. CVC does not have any really effective powers over them to seek compliance of its orders.
- CVC does not have administrative control over officials in vigilance wings of various central government departments to which it forwards corruption complaints. Though the government does consult CVC before appointing the Chief Vigilance

Officers of various departments, however, the final decision lies with the government. Also, the officials below CVO are appointed/transferred by that department only. Only in exceptional cases, if the CVO chooses to bring it to the notice of CVC, CVC could bring pressure on the Department to revoke orders but again such recommendations are not binding.

- Appointments to CVC are directly under the control of ruling political party, though the leader of the Opposition is a member of the Committee to select CVC and VCs. But the Committee only considers names put up before it and that is decided by the Government. The appointments are opaque.
- CVC Act gives supervisory powers to CVC over CBI. However, these supervisory powers have remained ineffective. CVC does not have the power to call for any file from CBI or to direct them to do any case in a particular manner. Besides, CBI is under administrative control of DOPT rather than CVC.
- Therefore, though CVC is relatively independent in its functioning, it neither has resources nor powers to enquire and take action on complaints of corruption in a manner that meets the expectations of people.

Central Bureau of Investigation (CBI)

The Central Bureau of Investigation traces its origin to the Delhi Special Police Establishment (SPE) which was set up in 1941 by the Government of India. Till date our Government has not realized the fact that the CBI needs to have a full fledged act and rules for its independent functioning. The officers from state police are drafted on deputation to CBI. It is claimed that the CBI officers are trained but the fact remains that none of the police officers are trained in conducting any kind of investigation by the parent State Government. Thus, the reason for dismal performance by CBI is lack of expertise. Also, as per information available on its web site, it is short staffed by at least 20%.

CBI is under the direct functional control & superintendence of the Central Government. Therefore, very often this premier agency is used to settle the scores with the political opponents. It is a matter of record that the prosecution rate involving high profile cases related to politicians and bureaucrats continue to drag for decades before the special courts and the politicians or bureaucrats continue to enjoy their freedom. As and when any political opponent is to be taught a lesson, the strings of CBI are pulled.

CBI has powers of a police station to register FIR and investigate any case related to a Central Government department on its own or any case referred to it by any state government or any court. However:

- CBI is overburdened and does not accept cases even where amount of defalcation is alleged to be around Rs 1 crore.
- CBI is directly under the administrative control of Central Government. So, if a complaint pertains to any minister or politician who is part of a ruling coalition or a bureaucrat who is close to them, CBI's credibility suffers and there is increasing public perception that it cannot do a fair investigation and that it is influenced to scuttle these cases.

Therefore, if a citizen wants to make a complaint about corruption by a politician or an official in the Central Government, there isn't a single anti-corruption agency which is effective and independent of the government, whose wrong-doings are sought to be investigated. CBI has powers but it is not independent. CVC is independent but it does not have sufficient powers or resources.

At State Level

The position if anything is worse in the States. All vigilance agencies (like state vigilance department, departmental vigilance wings) and anti-corruption agencies (like anti-corruption department of state police, CID etc.) are directly under the control of state government and therefore, ineffective in fairly investigating corruption cases against their political bosses. In some states, we have the institution of Lokayuktas.

State Vigilance Commissions/Departments

The State Governments have put in place the system of Vigilance Commissions/ Departments. Normally the police officers or some of the departmental officers are appointed as heads of Vigilance Departments. Unfortunately, the Vigilance Departments have failed in carrying out its mandate.

Lokayuktas

- Lokayuktas cannot initiate investigations on their own. They have to seek permission of state government to investigate cases involving officials above certain levels.
- In some states, vigilance department has been given powers over bureaucrats and Lokayuktas have been given powers only over politicians. Such division of jurisdiction hampers investigations. In a case involving both politician and bureaucrats (which is the case most of the times), both Lokayukta and the vigilance department feel handicapped.
- Lokayuktas merely have advisory roles. They do not have the powers to directly initiate prosecution. They make recommendations to the government, which may or may not agree with those recommendations.

- They also do not have adequate resources to investigate the large number of complaints that they receive.
- Lokayukta is appointed by the state government in a non-transparent and arbitrary manner. In some states, their independence has been seriously eroded.

Therefore, there isn't any effective anti-corruption agency either at the centre or at the state level, which is independent of political executive and which has the power and the resources to entertain and investigate any complaint of corruption and then prosecutes the guilty person.

Central Information Commission (CIC)

The Central Information Commission is the Apex Appellate Body that hears the appeals filed by the information seekers who have been denied information by the APIO/CPIO or the first Appellate Authority. As the matter reaches CIC, first and foremost the appellant has to wait due to pendency. Once the matter reaches for hearing, the Appellant is treated as a criminal by the Information Commissioners. Very often they not only misbehave with the Appellant, but the Appellant is also threatened by the Information Commissioners themselves. Since the Information Commissioners is one side of the coin and the other side of the coin is the APIO/CPIO/AA, the penalties are imposed in rare cases and that too where the Information Commissioner or his junior is interested.

It has been observed that the Information Commissioners have appointed a few juniors who conduct hearings for and on behalf of the Information Commissioner and hear both the CPIO/Appellate Authority and the Appellant. Thereafter, they go back to the Information Commissioner and inform both the parties that the decisions shall be communicated to them. It is surprising that how such patently illegal practice can be permitted within the Apex Organization.

Serious Fraud Investigation Office (SFIO)

SFIO is a multi-disciplinary organization under Ministry of Corporate Affairs, consisting of experts in the field of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation for detecting and prosecuting or recommending for prosecution white-collar crimes/frauds. These experts have been taken from various organizations like banks, Securities & Exchange Board of India, Comptroller and Auditor General and concerned organizations and departments of the Government.

It started functioning from 1st October, 2003 only. This organization was set up in the backdrop of a stock market scams, failure of non financial banking companies, phenomena of vanishing companies and plantation companies. This organization has one regional office in Mumbai which started functioning from October 2004.

Financial Intelligence Unit (FIU)

Consequent to the enactment of the Prevention of Money Laundering Act, 2002, FIU-IND was set up in 2004. It is a central national agency for receiving, processing, analysing and disseminating information relating to suspected financial transactions. It is an independent agency reporting to Economic Intelligence Council headed by the Finance Minister.

FIU-IND receives Cash Transactions Reports (CTRs) and Suspicious Transactions Reports (STRs) from various reporting entities (banks, insurance companies and financial market intermediaries) under the PMLA. After analysing the information received, it shares that with national intelligence and law enforcement agencies, regulatory authorities and foreign FIUs

Investigating Agencies under Revenue Department, Ministry of Finance

The Government of India has set up the following Investigation Agencies which function under the Department of Revenue in the Ministry of Finance:

- The Central Economic Intelligence Bureau (CEIB),
- Directorate General of Revenue Intelligence(DRI),
- Directorate of Enforcement (ED),
- Directorate General of Anti-Evasion (DGAE),
- Directorate General of Income Tax (Investigation) (DGIT(I)) and
- Narcotics Control Bureau (NCB).

CEIB, an apex body, was set up to coordinate and strengthen the intelligence gathering activities as well as investigative efforts of all the Agencies which enforce economic laws. It also acts as a Secretariat of the Economic Intelligence Council which is responsible to ensure full co-ordination among the various agencies including Central Bureau of Investigation, Reserve Bank of India, Intelligence Bureau etc.

DRI deals with Customs related offences. It is responsible for collection of intelligence about smuggling of contraband goods, narcotics, under-invoicing, over-invoicing etc. through sources of India and abroad, including secret sources. It analyses and disseminates such intelligence to the field formations for action, keeps liaison with foreign countries, Indian Missions and enforcement agencies abroad on anti-smuggling matters and keeps liaison with the CBI and through them with the INTERPOL. It functions as the liaison authority for exchange of information among ESCAP countries for combating international smuggling and customs frauds in terms of the recommendations of the ESCAP conference.

ED deals with foreign exchange related offences. It is mainly concerned with the enforcement of the provisions of the Foreign Exchange Management Act to prevent leakage

of foreign exchange which generally occurs through malpractices such as remittances of Indians abroad other than through normal banking channels, non-repatriation of the proceeds of the exported goods, under-invoicing of exports and over-invoicing of imports and any other type of invoice manipulation, illegal acquisition of foreign exchange through Hawala and secreting of commission abroad. Its mandates are to detect cases of violation and also perform substantial adjudicatory functions to curb such malpractices.

DGAE deals with central excise related offences. It collects, collates and disseminates intelligence relating to evasion of central excise duties on an all India basis. It coordinates action with Enforcement agencies like Income-Tax, VAT etc. in respect of cases in which central excise evasion has come to notice.

DGIT (I) deals with Income Tax related offences. Its functions include collection of intelligence pertaining to evasion of direct taxes, organising search actions to unearth black money from time to time, dissemination of information and intelligence collected by passing on the same to the concerned authorities including assessing authorities, and maintaining liaison with other Central and State agencies in all matters pertaining to tax evasion.

NCB deals with drugs related offences. It is the apex coordinating agency. It also functions as an enforcement agency through its field units which collect and analyse data related to seizures of narcotic drugs and psychotropic substance, study trends, modus operandi, collect and disseminate intelligence and work in close cooperation with the Customs, State Police and other law enforcement agencies.

3 INTERNATIONAL SCENARIO ON ANTI-CORRUPTION MOVES

1) INITIATIVES by UN, OECD, G-20, G-8 AND FATF

United Nations (UN)

UN towards its commitment to maintain international peace and security, developing friendly relations among nations, promoting social progress, better living standards and human rights, works on a broad range of fundamental issues, from sustainable development, environment and refugees protection, disaster relief, counter terrorism, disarmament and non-proliferation to promoting democracy, human rights, gender equality, advancement of women, good governance, economic and social development and international health.

Through UN efforts, governments have concluded many conventions and multilateral agreements to make the world a safer and healthier place with greater opportunity and justice for all. One such convention is the United Nations Convention against Corruption (UNCAC). It is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The UNCAC covers wide spectrum including promoting, and strengthening measures to prevent and combat corruption, facilitate and support international cooperation, technical assistance and information exchange in asset recovery.

Other conventions which are worth mentioning here are:

- The United Nations Convention against Illicit Trade of Narcotics Drugs and Psychotropic Substances, 1988.
- The United Nations Convention against Transnational Organized Crime, 2000.

The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit of United Nations office on Drugs and Crime (UNODC) is responsible for carrying out the Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism, which was established in 1997 in response to the mandate given to UNODC through the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The Unit's mandate was strengthened in 1998 by the Political Declaration and the measures for countering money-laundering adopted by the General Assembly at its twentieth special session, which broadened the scope of the mandate to cover all serious crime, not just drug-related offences.

The broad objective of the Global Programme is to strengthen the ability of Member States to implement measures against money-laundering and the financing of terrorism and to assist them in detecting, seizing and confiscating illicit proceeds, as required pursuant to United Nations instruments and other globally accepted standards, by providing relevant and appropriate technical assistance upon request.

Organisation for Economic Cooperation and Development (OECD)

Fighting corruption is one of the main priorities of OECD. It has set up standards and principals to promote anti-corruption measures. It has addressed the problem of corruption with its multidisciplinary approach which includes fighting bribery of foreign public officials, combating corruption in fiscal policy, public and private sector governance, development aid and export credits. OECD members have adopted Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997. It requires each party to take such measures to establish that it is a criminal offence under its law for any person to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

OECD has also developed the Agreement on Exchange of Information on Tax Matters. It is not a binding instrument but contains two models for bilateral agreements drawn up in the light of the commitments undertaken by the OECD and the committed jurisdictions. The purpose of this Agreement is to promote international cooperation in tax matters through exchange of information.

G-20

The G-20 has successfully taken up a range of issues since 1999, including agreement about reducing abuse of the financial system, dealing with financial crises and combating terrorist financing. The G-20 also aims to foster the adoption of internationally recognized standards through the example set by its members in areas such as the transparency of fiscal policy and combating money laundering and the financing of terrorism. In 2004, G-20 countries committed themselves to higher standards of transparency and exchange of information on tax matters. This aims to combat abuses of the financial system and illicit activities including tax evasion.

In Seoul Summit in 2010, G-20 has taken up an agenda for action on combating corruption, promoting market integrity and supporting a clean business environment. G-20 Anti Corruption Action Plan targets that by 2011, it shall establish clear and effective channels for mutual legal assistance and other forms of international cooperation on corruption and

asset recovery and point of contacts for law enforcement and international cooperation on corruption cases and develop specialized expertise for asset recovery.

G-8

With renewal of commitment to fight corruption, G-8 has been pursuing transparency in public financial management and accountability. The G-8 committed to seek, when appropriate and in accordance with national laws, to deny entry and safe haven to public officials found guilty of corruption, enforce anti-bribery laws rigorously, and establish procedures and controls to conduct enhanced due diligence on accounts of "politically exposed persons." The G-8 leaders also committed to implement and promote the FATF recommendations, the UN Convention on Transnational Organised Crime, and the UN Convention against Corruption.

Financial Action Task Force (FATF)

FATF is an inter-governmental policy making body, comprised of over 30 countries, that has ministerial mandate to establish international standards for combating money laundering and terrorist financing. It was set up in 1989 by the G-7 Summit in Paris. FATF has issued 40 recommendations providing comprehensive plan of action to prevent abuse of financial system for money laundering. It has also issued 9 special recommendations to set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. Over 170 jurisdictions have joined FATF or FATF style regional bodies (such as Asia Pacific Group on Money Laundering) and committed at the ministerial level to implementing FATF standards and having anti-money laundering (AML)/counter terrorist financing (CFT) systems.

Finding that law enforcing agencies had limited access to relevant financial information, need was felt to set up national level central agency for reporting suspicious financial transactions by entities in financial sector. These are called Financial Intelligence Units (FIUs) by various countries. A network of FIUs was established as an informal group for stimulation of international cooperation, known as Egmont Group in 1995. It has now more than 101 member countries with operational FIUs.

FATF has recently published a Reference Guide and Information Note on use of FATF Recommendations to support fight against corruption.

2) INITIATIVES by NGOs

Transparency International (TI)

TI, the global civil society organisation leading the fight against corruption, was established in 1993. It is a global network including more than 90 locally established national chapters

and chapters-in-formation. Through joint cooperation, Transparency International promotes inter-governmental agreements to fight corruption in cooperation with international organisations.

Transparency International was one of a handful of civil society organisations involved in drafting two major international agreements, the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption. It was also closely involved in establishing the OECD's Anti-Bribery Convention.

TI has developed some corruption-fighting tools such as 'Integrity Pacts' which help to safeguard public procurement from corruption. It assesses and publishes the annual 'Corruption Perceptions Index (CPI)' which ranks countries by perceived levels of corruption among public officials and 'Bribe Payers Index' (BPI) which looks at the supply side of corruption, ranking the leading exporting countries according to their propensity to bribe when doing business abroad. It also publishes 'Global Corruption Barometer', which is a survey that assesses general public's attitude towards corruption in countries around the world, collecting the knowledge necessary for the design of anti-corruption measures.

TI's indices have helped to place the fight against corruption at the forefront of the political agenda in many countries.

Global Financial Integrity (GFI)

GFI, launched in 2006, works towards promoting national and multilateral policies, safeguards and agreements aimed at curtailing the cross-border flow of illegal money. It facilitates strategic partnerships, and conducts groundbreaking research to curtail illicit financial flows and enhance global development and security. It has published its research papers on relevant topics such as Tax Revenue Loss from Trade Mispricing and Illicit Financial Flows.

Camden Assets Recovery Inter-Agency Network (CARIN)

CARIN, an informal government forfeiture organization was established to build an informal international network for law enforcement and prosecutorial/juridical officers who are asset forfeiture practitioners. Main objectives of CARIN include promoting the exchange of information and good practices between 33 members of CARIN, focusing upon and promoting the forfeiture of all assets that are currently within the scope of existing ratified international agreements, encouraging members to establish national asset recovery offices within their jurisdiction.

Other NGOs

A large number of NGOs are working on anti-corruption issues and also offer assistance to countries to strengthen their capacities to tackle ant-corruption reform and to move closer to international standard. Some of the important NGO's are mentioned below:

- Anti-corruption Gateway for Europe and Eurasia
- Anti-corruption Network for Transition Economies
- African Parliamentarians' Network Against Corruption
- Asia Crime Prevention Foundation
- Centre for International Private Enterprise Anti corruption Program
- Commission For Africa
- European Healthcare Fraud and Corruption Network
- European Partners Against Corruption
- Global Organisation of Parliamentarians against Corruption

3.) THE STOLEN ASSET RECOVERY (StAR) INITIATIVE

StAR Initiative was launched in 2007 jointly by the UNODC and the World Bank Group to address the problem of theft of public assets from developing countries by corrupt leaders and hidden in the financial centers of developed countries. The international legal framework underpinning StAR Initiative is provided by the UNCAC. StAR Initiative is described as the 'missing link' in an effective anti-corruption effort. By putting corrupt leaders on notice that stolen assets will be traced, seized, confiscated and returned to the victim country, StAR constitutes a formidable deterrent to corruption.

The objectives of StAR are to enhance cooperation between those developed and developing countries which have ratified UNCAC and to help and cooperate in enhancing legislative, investigative, judicial and enforcement capacity of the developing countries seeking recovery of stolen assets.

It is a well accepted fact that public assets stolen from the developing countries are often hidden in banks located in financial centers of developed countries or in the tax heavens. Further multinational corporations from the developed countries are often the source of bribes paid to public officials in developing countries.

StAR has prepared an Action Plan Matrix which identifies two ways to help developing countries recover stolen assets. One is reducing barriers in developed countries to recover stolen assets and second is strengthening the ability of developing countries to recover them. UNODC and World Bank would not be involved directly in the investigation,

tracing, law enforcing, prosecution, confiscation and repatriation of stolen assets but would provide technical assistance on adopting domestic legal frameworks for consistence with UNCAC.

In recent years, Nigeria, Peru, Zambia and Philippines have enjoyed some success in recovery of assets stolen by their corrupt former leaders. But the process has been very costly and time consuming. Lack of political will, limited legal, investigative and judicial capacity and non-cooperative attitude of jurisdiction where stolen assets are hidden are some of the serious obstacles which developing countries might face in the process of recovering the stolen assets.

UNODC and World Bank under StAR Initiative have come out with another publication titled 'Asset Recovery Hand Book-A Guide for Practitioners'. This publication while suggesting the process of recovery of stolen assets, deals with inter alia, general process for asset recovery, legal avenues for achieving asset recovery, strategic considerations for developing and managing a case, securing evidence and tracing assets, mechanism of confiscation, bringing a civil action and recovery of asset from the foreign jurisdiction.

4) CASE STUDIES OF SUCCESSFUL ATTEMPTS MADE BY SOME COUNTRIES TO BRING BACK THEIR ASSETS TAKEN AWAY BY THEIR CITIZENS/RULERS/ BUREAUCRATS

UNODC and World Bank in their document titled 'Stolen Asset Recovery Initiative: Challenges, Opportunities and Action Plan', issued in June 2007, has prepared case studies on three countries namely, Nigeria, Peru and Philippines which has achieved some success in recovering their stolen assets. Another case study of Zambia has also been reported subsequently. Synopsis of these case studies, as appearing in the document, is reproduced as an Annexure. Main findings of these case studies are:

i) Lack of transparency and low public accountability facilitates the looting of public assets.

ii) The main techniques used to launder the proceeds of corruption include wire transfers, use of shell corporations in bank secrecy jurisdictions and direct deposit in the form of cash or bearer instruments.

iii) Strong domestic will is fundamental to successful asset recovery.

iv) Despite high level of corruption, small steps towards accountability and transparency may significantly reduce the theft of public assets.

v) Little can be achieved without the effective cooperation and goodwill of countries where proceeds of corruption are hidden.

vi) Due to either weak system or lack of sound international practice in public financial management, recovered money could not be put to the best use.

5.) NEW US LEGISLATION AGAINST OFFSHORE TAX EVASION

The US has recently passed a legislation titled 'The Stop Tax Haven Abuse Act, 2009' which deals with problem of offshore tax abuse. The Act was passed after a period of more than two years when in was first introduced in February, 2007.

The Bill was introduced after the Senate Permanent Subcommittee on Investigation presented multiple case histories exposing how two banks namely UBS AG of Switzerland and LTG Bank of Liechtenstein, used array of secrecy tricks to help US clients hide assets and dodge US taxes. The Subcommittee's investigation revealed that UBS had opened Swiss accounts for an estimated 19,000 US clients with nearly $18 billion in assets. It further presented seven case histories of US persons who had secretly stashed million of dollars in accounts with LTG Bank. These case histories unfolded like spy novels, with secret meetings, hidden funds, shell corporations and complex offshore transactions spanning the globe from the US to Liechtenstein, Switzerland, the British Virgin Islands, Australia and Hong Kong. What the case histories had in common were officials of LTG Bank and its affiliates acting willing partners to move a lot of money into LTG accounts while obscuring the ownership and origin of the funds from tax authorities, creditors and courts.

A Report by the Government Accounting Office shows that out of the 100 largest publicly traded corporations, 83 have subsidiaries in tax havens. For example Morgan Stanley has 273 tax haven subsidiaries while Citigroup has 427 subsidiaries with 90 in the Cayman Islands alone.

While introducing the Stop Tax Haven Abuse Act, Senator Carl Levin has said "*We can fight back against offshore secrecy jurisdictions and offshore tax abuses if we summon the political will. Our bill offers powerful new tools to tear down the tax haven secrecy walls in favor of transparency, cooperation and tax compliance. To tear down those secrecy walls, protect honest tax payers and obtain the revenue essential for critical needs, I hope my colleagues will act during this Congress to enact a legislation to shut down the $ 100 billion yearly in offshore tax abuses.*"

The Stop Tax Haven Abuse Act contains provisions deterring the use of offshore secrecy jurisdictions for tax evasion by establishing rebuttable evidentiary presumption and securities legal proceedings for non-publicly traded entities located in Offshore Secrecy jurisdictions. It also contains provisions such as increased penalty for failing to disclose offshore holdings, strengthening John Doe summons's use in offshore tax cases, strengthening tax shelter penalties, tougher tax shelter opinion standards for tax practitioners and codifying and strengthening the economic substance doctrine.

4 SUGGESTIONS ON RECOVERY MECHANISM AND OTHER ANTI-CORRUPTION MEASURES

Strategy

It is important to understand that Indian money stashed in foreign banks/countries may have been generated from:

1. Corruption including bribes, cuts and swindled money.
2. Criminal activities including drug trafficking, arms deals, human trafficking, trafficking of endangered species, extortion/protection money, money relating to murder/organised crime or for waging war against state.
3. Tax evasion by various means including mispricing, use of tax heaven entities and falsification of accounts.

The different nature of money has to be dealt with differently. Target should be:

1) To confiscate the money, which is generated through corrupt and illegal activities.
2) To collect due tax, interest and penalties on money generated through tax evasion.
3) To launch prosecution in both the cases mentioned above.

Process

In line with the strategy explained above, the processes may be divided into two parts:

1) Identification, verification, collection of taxes, confiscation and return of stolen money/assets to India and prosecution of guilty.
2) Introduction of new legislation or amendment of current laws to prevent further accumulation of wealth outside India and to ensure continuous availability of information on that.

STEPS TO BE TAKEN UNDER THE PROCESS OF IDENTIFICATION, VERIFICATION, COLLECTION OF TAXES, CONFISCATION AND RETURN OF STOLEN MONEY/ASSETS TO INDIA AND PROSECUTION OF GUILTY

1) To ratify UNCAC

UNCAC requires member counties to return assets obtained through corruption to the country from which they were stolen. To take advantage of such provision in the Convention, we have to first ratify the Convention.

2) To fill gaps in complying with obligations under UNCAC

Before we take any benefit under UNCAC, we have to implement our obligations under the Convention. A Gap Analysis carried out by TI can be reviewed to identify gaps. As per the Document prepared by TI, legislations on bribery in private sector

(Article 21) and protection of witnesses (Article 32), provisions for forfeiture of property of corrupt public servants (Article 31) and providing right to initiate legal proceedings against those responsible for the damage in order to obtain compensation (Article 35) are some important areas where we have to take immediate steps.

3) To secure help from StAR in implementing UNCAC and filing international mutual legal assistance (MLA) requests under UNCAC.

As a part of its Action Plan Matrix, UNODC and World Bank Group shall provide technical assistance to developing countries on implementing UNCAC, especially on adoption of domestic legal frameworks for consistency with UNCAC and relating to enhancement of the capacity of the criminal justice system to effectively prevent asset looting and approaching asset recovery consistent with internationally accepted legal standards. Efforts should be made to include India as one of such countries.

International cooperation is essential for the successful recovery of assets that have been transferred to or hidden in foreign jurisdiction. International cooperation includes' informal assistance, MLA requests and extradition. MLA request is a written request used to gather evidence (involving coercive measures), obtaining provisional measures and seek enforcement of domestic orders in a foreign jurisdiction.

Initially, technical assistance from UNODC and World Bank Group can be taken on filing a request for mutual legal assistance, how to approach receiving countries and advice on contracts with lawyers and forensic accountants working with relevant country authorities. Simultaneously, steps shall be taken to develop reasonable expertise within the country to handle this aspect independently.

4) To accede to OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The OECD Convention deals with the issue of bribery of foreign public officials including mutual legal assistance for the purpose of criminal investigations and proceedings. Under the convention, a party shall not decline to render mutual legal assistance to the requesting party for criminal matters within the scope of the Convention even on the ground of bank secrecy.

We have to amend the Prevention of Corruption Act to bring in foreign bribery and related money laundering crimes under its ambit. We shall also be required to fulfill other obligations under the Convention to take full benefits.

5) To make quick moves to negotiate Double Tax Avoidance Agreements with tax heavens/uncooperative jurisdictions to ensure availability of relevant information

Not only non-cooperating and high risk jurisdictions, as identified by FATF should be approached and be persuaded to enter into DTAA with India, but treaties with other tax havens should also be renegotiated to have excess of information.

6) To comply with FATF recommendations, especially relating to politically exposed persons and transactions involving wire transfers, and to seek frequent exchange of information from other FIUs.

As decided in March 2009 meeting of G20 Working Group on Reinforcement International Cooperation and Promoting Integrity in Financial Markets, we should implement all the FATF 40+9 Recommendations to take benefit of enhanced information exchange.

FIU-IND may be suitably expanded to ensure not only collection of more formal or informal information from other FIUs across the world to identify the beneficial owners of the parked funds/assets and to more effective monitoring of PEPs but also to properly analyse suspicious transaction reports (STRs) being received from financial institutions along with information received from other FIUs.

Mechanism should be developed and put in place to make it obligatory on the part of financial institutions to provide STRs on wire transfers.

7) To introduce legal provisions on the lines of 'John Doe Summons'

John Doe Summons are summon where the name of the tax payer under investigation is unknown and hence not specifically identified. When a plaintiff believes that it has a cause of action against a defendant, who for any reason, cannot be identified by the plaintiff before the lawsuit is commenced he goes for John Doe Lawsuit. US IRS has served such summons to the Swiss Bank UBS and has achieved some success in getting the names of the secret account holders. Looking into the present law in US known as 'John Doe Summons' and its application in UBS case, we should also amend our respective laws to have such provision and should start using it in getting the names of undisclosed Indian depositors in foreign banks.

STEPS TO BE TAKEN UNDER THE PROCESS OF INTRODUCTION OF NEW LEGISLATION OR AMENDMENT OF CURRENT LAWS TO PREVENT FURTHER ACCUMULATION OF WEALTH OUTSIDE INDIA AND TO ENSURE CONTINUOUS AVAILABILITY OF INFORMATION ON THAT

1) Introduce law on bribery in the private sector

In the Gap Analysis carried out by TI, it has pointed out that in terms of Article 21 of the Convention, India should consider adopting a legislation to establish as criminal offence when committed intentionally in the course of economic, financial and commercial activities. The existing laws such as the Prevention of Money Laundering Act can also be amended to address the issue.

2) Introduce legislation in line with Stop Tax Haven Abuse Act, 2009 of USA.

To avoid tax evasion through tax havens, we should also introduce a statute in line with 'The Stop Tax Haven Abuse Act, 2009' of USA. Alternatively, the present Income Tax Act may be amended to include provisions such as:

- Introduction of taxability provisions on businesses incorporated in a tax haven, pretending to be a foreign corporation for local tax purposes while in reality being managed and controlled from India only (section 103).
- Reporting requirement for Indian persons who benefit from a passive foreign investment corporation (Section 109).
- Taxability clause on transfer of valuable patents to the shell corporation.
- Provisions relating to rebuttable presumption in tax and securities legal proceedings for non-publicly traded entities located in offshore secrecy jurisdiction with regard to its control and beneficial ownership located in the country if involving a Indian person (Section 101)
- Strict KYC norms for opening bank account in India and to disclose ultimate beneficial ownership in case of Participatory Notes (PN).
- Obligation on the tax payer to provide information on his involvement in offshore corporations, trust or other entities.
- Introduce severe penalties on professional promoting abusive tax shelters.

3) To strengthen national anti corruption framework by constituting a new single agency dealing with the menace of flight of capital from the country

A single agency, made out of workforce from various related agency can be formed to serve the purpose better due to highly technical and skilled job of bringing back the stolen money/assets.

4.) To ensure proactive role of financial system regulators like Reserve Bank of India and Securities Exchange Board of India

The crux of the matter is availability of relevant information. Financial system regulators are the best placed agencies to put in place regulations for generation of authentic and timely information. Therefore, the role of RBI which regulates banks and NBFCs, and SEBI which regulates listed corporate and market intermediaries are very crucial, and proactive actions are required by them in this regard.

ANNEXURE

SYNOPSIS OF COUNTRY CASE STUDIES OF SUCCESSFUL ATTEMPTS MADE BY SOME COUNTRIES TO BRING BACK THEIR STOLEN ASSETS

NIGERIA

1. Case of General Sani Abacha

General Sani Abacha, who had governed Nigeria for five years from 1993 to 1998, died on June 8, 1998 of a reported heart attack. He is estimated to have looted from $3 billion to $5 billion over the five years of his rule. His death prompted the opening of investigations, first by General Abdusalami Abubakar and then by President Olusegun Obasanjo, into Abacha's criminal dealings, culminating in campaigns to recover the assets stolen by him and his associates and hidden both within and especially outside the country.

Abacha is alleged to have used four methods for plundering public assets: outright theft from the public treasury through the central bank; inflation of the value of public contracts; extortion of bribes from contractors; and fraudulent transactions. The corruptly acquired proceeds were laundered through a complex web of banks and front companies in several countries and localities, but principally Nigeria, the UK, Switzerland, Luxembourg, Liechtenstein, Jersey, and the Bahamas.

The chronology of events leading to eventual repatriation was as follows:

- In 1998, a Special Police Investigation was launched to investigate Abacha's theft.
- On May 26, 1999, General Abubakar issued Decree No. 53, which facilitated the domestic recovery of $800 million in cash and assets from the Abacha family and associates.
- President Obasanjo, who assumed office in May 1999, redoubled the effort to find more of the stolen assets. In September 1999, the Nigerian government engaged a Swiss legal firm, Monfrini and Partners, to assist with tracing and recovering of monies held abroad.
- Swiss authorities accepted a request for Mutual Legal Assistance on December 1999, leading to the issuance of a general freezing order.
- Before the funds could be repatriated, however, Swiss law required Nigeria to present the Swiss authorities with a final forfeiture judgment reached in the Nigerian courts. This proved legally and politically daunting. In a landmark ruling rendered in 2004, Monfrini and Partners got around this hurdle by arguing successfully that, since there was adequate proof of the criminal origin of the Abacha funds, Swiss authorities could waive the final forfeiture requirement.

- It took Nigeria five years to obtain a repatriation decision from the Swiss authorities due to numerous appeals brought by the Abachas, who employed large numbers of lawyers to block or slow down the case.
- After a series of negotiations, which led to the selection of the World Bank as a bona fide third party for the monitoring of recovered assets, repatriation finally took place in September and November 2005 and early 2006, for a total of $505.5 million.
- With a grant from the Swiss government, the World Bank mobilized Nigerian civil society organizations to participate in the review and analysis of the use of the looted funds. The review found that the funds had generally been used to increase budget spending in support of the MDG areas, as promised.

2. Case of Diepreye Alamieyeseigha

In the case involving Diepreye Peter Solomon Alamieyeseigha, former governor of Bayelsa State, Nigeria, this jurisdiction was able to recover $17.7 million through domestic proceedings and through cooperation with authorities in South Africa and the United Kingdom.

In September 2005, Alamieyeseigha was first arrested at Heathrow Airport by the London Metropolitan Police on suspicion of money laundering. An investigation revealed that Alamieyeseigha had $2.7 million stashed in bank accounts and in his home in London, as well as London real estate worth an estimated $15 million. Alamieyeseigha was released on bail and subsequently left the jurisdiction in November 2005, returning to Nigeria.

In Nigeria, he claimed immunity from prosecution. He was subsequently removed from office by Bayelsa State's lawmakers, and thereby lost his immunity. Later in November 2005, Nigeria's Economic and Financial Crimes Commission charged him with 40 counts of money laundering and corruption, and it secured a court order restraining assets held in Nigeria.

For assets in the United Kingdom, close cooperation between the Commission and the London Metropolitan Police's Proceeds of Corruption Unit was crucial. The $1.5 million in cash seized from Alamieyeseigha's London home was confiscated under the Proceeds of Crime Act on the basis of a court order that the assets represented proceeds of crime. In May 2006, the court ordered the funds repaid to Nigeria, and the transfer was made a few weeks later. For the bank accounts, the process was more challenging because assets and evidence were located in the Bahamas, the British Virgin Islands, the Seychelles, South Africa, and the United Kingdom. Nigerian authorities recognized that requesting assistance from these jurisdictions could take considerable time and that orders from Nigerian courts would not necessarily be executed. In addition, the pursuit of legal proceedings in each of these jurisdictions was a daunting prospect because the Nigerian authorities had little evidence linking Alamieyeseigha to these assets and linking the assets to acts of corruption.

As a result, Nigerian authorities decided to bring civil proceedings in the United Kingdom and simultaneously pursue criminal proceedings in Nigeria. To secure evidence, the Nigerian authorities obtained a disclosure order for the evidence compiled by the Metropolitan Police in the course of its investigation. Nigeria was able to use this evidence together with Alamieyeseigha's income and asset declaration to obtain a worldwide restraint order covering all assets owned directly or indirectly by Alamieyeseigha and a disclosure order for documents held at banks and by Alamieyeseigha's associates.

In parallel with those proceedings, the South African Asset Forfeiture Unit initiated NCB confi scation proceedings against Alamieyeseigha's luxury penthouse. Funds were returned to Nigeria following the sale of the property in January 2007.

Before a Nigerian high court in July 2007, Alamieyeseigha pleaded guilty to six charges of making false declaration of assets and caused his companies to plead guilty to 23 charges of money laundering. He was sentenced to two years in prison, and the court ordered the confi scation of assets in Nigeria. Alamieyeseigha's guilty pleas effectively voided his defense in the civil proceedings in the London High Court; and, in December 2007, the Court issued a summary judgment confi scating property and a bank account in the United Kingdom. A judgment in July 2008 led to the confi scation of the remaining assets in Cyprus, Denmark, and the United Kingdom.

PERU

During the 10 years President Alberto Fujimori was in office (1990-2000), the intelligence police chief, Vladimiro Montesinos, methodically bribed judges, politicians, and the news media. On September 14 2000, cable Channel N broadcast a video showing Montesinos bribing Congressman Alex Kuori with $15,000. This event was followed by investigations that led to Fujimori's resignation and uncovered a network of corruption that had taken control of the country, undermining the institutional governance systems that existed in the country (the Constitution, elections, rule of law, free press and independent judiciary). During Fujimori's administration, more than $2 billion was allegedly stolen from the state. After his resignation, the interim government led by President Valentín Paniagua redesigned the legal and institutional framework. A new Anti-corruption System was put in place, which included the creation of prosecution agencies and anti-corruption courts, as well as a series of innovations to the judicial system: the establishment of a negotiated justice system (plea bargaining), special criminal proceedings, and procedural instruments.

The main source of theft by Montesinos and his cronies was through the extortion of bribes in awarding national defense procurement contracts. These bribes were hidden from the public based on a legal provision that allowed the executive to deny disclosure of the bidding process on the grounds of "national security." For laundering their proceeds, Montesinos and his cronies used shell companies based in tax haven jurisdictions that were managed by trustees.

The main events during the Peruvian asset recovery experience were as follows:

- In November 2000, two months after the scandal broke and with Montesinos on the loose, Swiss authorities froze $48 million linked to him and his cronies.
- That same month, Fujimori appointed a Special Prosecutor to investigate the Montesinos affair. Fujimori then proceeded to leave the country and seek asylum in Japan.
- Between December 2000 and January 2001, the Peruvian government introduced the afore- mentioned legislative and judicial reforms, which proved fundamental to the advancement of investigations, the dismantling of the prevailing corruption network, and the repatriation of part of the stolen assets.
- In March 2001, the Cayman Islands froze nearly $33 million, which was repatriated to Peru in August 2001.
- In June 2001, Montesinos was captured in Caracas and extradited to Peru.
- In August 2002, after almost two years of investigation and litigation, Swiss authorities returned $77.5 million to the Peruvian government.
- In January 2004, after the signature of a bilateral agreement, the United States repatriated to Peru $20 million in funds that it forfeited from Montesinos and one of his associates.
- All the repatriated assets went into a special fund called FEDADOI, which was managed by a board of five members appointed from different government ministries.
- Although guidelines and detailed procedures were defined to ensure the transparent use of the nearly $185 million in recovered assets, these resources ended up mainly supplementing the budgets of the institutions that had a member on the FEDADOI board.

THE PHILIPPINES

Ferdinand Marcos started accumulating his ill-gotten wealth in 1965, when he was first elected president. He was reelected four years later but declared Martial Law in September 1972, before his second term was completed. The Martial Law regime continued until February 1986, when Marcos was toppled by the so-called peaceful "People Power Revolution". He is estimated to have siphoned off between $5 and $10 billion.

This ill-gotten wealth was accumulated through six channels: outright takeover of large private enterprises; creation of state-owned monopolies in vital sectors of the economy; awarding government loans to private individuals acting as fronts for Marcos or his cronies; direct raiding of the public treasury and government financial institutions; kickbacks and commissions from firms working in the Philippines; and skimming off foreign aid and other forms of international assistance. The proceeds of corruption were

laundered through the use of shell corporations, which invested the funds in real estate inside the United States, or by depositing the funds in various domestic and offshore banks under pseudonyms, in numbered accounts or accounts with code names.

The asset recovery efforts of the Philippines extended over 18 years before achieving some success. The following were the landmark events:

- ***February 28, 1986 —*** The Presidential Commission on Good Government (PCGG) was launched and made responsible for recovering assets stolen by Marcos. Informal representations were made to the U.S. and Swiss courts to freeze Marcos assets abroad.
- ***March 25, 1986 —*** Swiss authorities froze Marcos assets in Switzerland.
- ***April 7, 1986 —*** PCGG filed a request for mutual assistance with the Swiss Federal Police Department under the provisions of the International Mutual Assistance on Criminal Matters Act (IMAC). This was not accepted, on the grounds of being "indeterminate and generic."
- ***December 21, 1990 —*** The Swiss Federal Supreme Court authorized the transfer of Swiss banking documents on Marcos deposits in Geneva, Zurich, and Fribourg to the Philippine government. It gave the Philippine government one year in which to file a case for the forfeiture of the deposits in Philippine courts, failing which the freeze would be lifted.
- ***December 17, 1991 —*** PCGG filed civil case 141 in Sandiganbayan,26 seeking to recover the Marcos assets.
- ***August 10, 1995 —*** PCGG filed with the District Attorney in Zurich a Petition for Additional Request for Mutual Assistance asking for asset repatriation even before the rendering of a final judgment in the Philippines. It also showed that the Marcos assets in Switzerland were a product of embezzlement, fraud, and the plunder of the public treasury.
- ***August 21, 1995 —*** Examining Magistrate Peter Cosandey granted the request and ordered all Marcos-related securities and accounts transferred to an escrow account with the Philippine National Bank (PNB). However, the Zurich Superior Court of Appeals denied the Order.
- ***December 10, 1997 —*** The Swiss Federal Supreme Court upheld Cosandey's Order. In April 1998, the Swiss deposits were transferred to an escrow account in PNB.
- ***July 15, 2003 —*** The Philippine Supreme Court issued a forfeiture decision in respect of the Marcos Swiss deposits.
- ***February 4, 2004 —*** PCGG remitted to the Bureau of the Treasury the amount of $624 million pertaining to the deposits.

ZAMBIA

In 2002, a task force was established in Zambia to investigate corruption allegations against the former president Frederick Chiluba and his associates during the period 1991-2001, to assess whether criminal proceedings could be brought, and to determine the best options for recovering assets. In 2004, the attorney general of Zambia initiated a civil suit in the United Kingdom to recover funds transferred to London and across Europe between 1995 and 2001 to fund the former president's expensive lifestyle- including a residence valued at more than 40 times his annual salary. These proceedings were launched in addition to ongoing criminal proceedings in Zambia.

Three factors informed the decision to launch the civil action in addition to the criminal proceedings: First, most of the defendants were located in Europe, making domestic criminal prosecution and confiscation impossible in a number of cases. Second, most of the evidence and assets were located in Europe, which made a European venue a more favorable option. And, third, specifically with respect to the cases whereas domestic criminal prosecution and confiscation was possible, successful international cooperation through an MLA request was unlikely. Zambia lacked the bilateral or multilateral agreements, procedural safeguards, capacity, and experience necessary to collect evidence and enforce confiscation orders across Europe. Instead, court orders obtained in a European jurisdiction would be easier to enforce in jurisdictions that were parties to the Brussels Convention on recognition of foreign court decisions in Europe.

London was chosen as the European venue because most of the funds diverted from Zambia had passed through two law firms and bank accounts in the United Kingdom, and the attorney general of Zambia was able to establish jurisdiction over defendants in jurisdictions that were parties to the Brussels Convention. Finally, it was anticipated that decisions obtained from courts in the United Kingdom would also be enforceable in Zambia when they were registered before the courts.

The High Court of London found sufficient evidence of a conspiracy to transfer approximately $52 million from Zambia to a bank account operated outside ordinary government business-the "Zamtrop account"-and held at the Zambia National Commercial Bank in London. Forensic experts traced the monies received in the Zamtrop account back to the ministry of finance. They also substantially traced the funds leaving the Zamtrop account, and they revealed that $25 million was misappropriated or misused.

In addition, the High Court found no legitimate basis for payments of about $21 million made by Zambia pursuant to an alleged arms deal with Bulgaria and paid into accounts in Belgium and Switzerland.

The Court held that the defendants conspired to misappropriate $25 million from the Zamtrop account and $21 million from the arms deal payments. The Court also held that the defendants had broken the fi duciary duties they owed to the Zambian Republic or dishonestly assisted in such breaches. As a result, the defendants were held liable for the amounts and assets corresponding to misappropriated funds.

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