International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Penalty and Prosecution under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015: A Critical Study of Deterrence, Proportionality and Constitutional Validity

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Abstract
The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was enacted by the Government of India to address the growing problem of undisclosed foreign income and assets held by Indian residents outside the country. The Act seeks to curb tax evasion and strengthen financial transparency through a stringent framework of taxation, monetary penalties and criminal prosecution. It imposes a tax of 30% on undisclosed foreign income and assets and provides for substantial penalties and imprisonment for specified violations.
Although these provisions aim to create a strong deterrent against tax evasion, their severity raises important questions concerning proportionality, fairness and constitutional safeguards. In particular, the distinction between deliberate concealment and inadvertent non-disclosure, the retrospective application of penal provisions, and the protection of individual rights under Articles 14, 20 and 21 of the Constitution require careful examination. Against this background, the present study critically analyses the penalty and prosecution framework under the 2015 Act, focusing on its effectiveness as a deterrent, the proportionality of its sanctions and its constitutional validity.

CHAPTER-I
INTRODUCTION
1.1.BACKGROUND OF THE STUDY:
Undisclosed foreign income and assets create a significant challenge in the India tax administration, revenue collection and also the financial transparency. To address these issues, India enacted the statutory legislation which is Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, which came into force on 1 April 2016 and established a separate framework for taxing undisclosed foreign income and assets. This Act prescribes the civil and criminal prosecution with the monetary penalties for the defaults and the offences also it reflects in the legislative tax compliances and preventing the concealment of the foreign assets and income.
Although stringent penalties and criminal prosecution may deter tax evasion, their application raises impo-

rtant questions concerning the proportionality of punishment and the distinction between deliberate concealment and inadvertent non-disclosure. The relationship between civil penalties and criminal liability must therefore be examined in light of the nature of the default, the statutory requirements, and the procedural safeguards available to taxpayers. The effectiveness of an enforcement framework depends not merely on the severity of sanctions but also on their lawful and proportionate application.

The constitutional validity of these enforcement provisions must be assessed under Articles 14, 20(1), 20(2), and 21 of the Constitution of India, which respectively concern equality before the law, protection against retrospective criminal punishment, double jeopardy, and personal liberty. Judicial interpretation and legislative amendments are also significant in determining the scope and application of penalties and prosecution under the Act. Accordingly, this doctrinal study examines the relevant statutory provisions, amendments, judicial decisions, and constitutional principles to evaluate whether the Act strikes an appropriate balance between effective tax enforcement, proportionality, and the protection of constitutional rights.

1.2. STATEMENT OF THE PROBLEM:

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was enacted to address the concealment of foreign income and assets through taxation, monetary penalties, and criminal prosecution. However, the severity and application of these sanctions raise concerns regarding proportionality, deterrence, and constitutional validity. In particular, the distinction between deliberate concealment and inadvertent non-disclosure requires critical examination to determine whether the prescribed consequences are justified by the nature of the default.

The problem lies in determining whether the penalty and prosecution framework effectively discourages tax evasion while complying with Articles 14, 20(1), 20(2), and 21 of the Constitution of India. Accordingly, this study critically examines the statutory provisions, legislative amendments, and judicial decisions to assess the adequacy of existing safeguards and identify the need for appropriate legislative or procedural reforms.

1.3. REVIEW OF LITERATURE:

A. BOOKS:

Aharon Barak, Proportionality: Constitutional Rights and their Limitations (CUP, 2012)[1] Barak sets out the theory behind the proportionality test: a legitimate purpose, a rational connection, necessity and a proper balance. The study can apply each stage to the 300% penalty and the prison terms for non-disclosure to ask whether they go further than the Act's purpose requires.

Andrew Ashworth, Principles of Criminal Law (Oxford University Press).[2] Ashworth explains the basic rules that should guide when something is made a crime and how it should be punished. These include that a person should be punished only if they are at fault, that the offence should be described fairly, and that the punishment should match the seriousness of the wrongdoing. This helps to judge whether the Act's offences, such as failing to disclose a foreign asset, deserve the same heavy treatment as deliberate fraud. It also helps to examine the Act's presumption of a guilty mind, because Ashworth stresses that the prosecution should normally prove fault.

[1] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Doron Kalir trans., Cambridge Univ. Press 2012).

[2] Andrew Ashworth & Jeremy Horder, *Principles of Criminal Law* (Oxford Univ. Press).

Douglas Husak, Overcriminalization: The Limits of the Criminal Law (Oxford University Press, 2008).[3] Husak argues that governments often use criminal law too much, and that criminal punishment should be used only when there is a strong reason. He says the law should not punish people more than is necessary. This supports the argument that having both a very large monetary penalty and a prison sentence for the same act of non-disclosure may be too much. It gives a strong critical view to set against the government's argument that strict punishment is needed.

Arun Kumar, The Black Economy in India[4] **and Understanding the Black Economy and Black Money in India**[5]**.** Kumar is an economist who has studied black money in India for decades. His books explain what black money is, how it is generated, how large it may be, and why simple tax and penalty measures often fail to stop it. They give the policy background and let them question whether harsh penalties in the Act address the real causes of black money. They also help to show that much black money stays inside India, so a law aimed at foreign assets only covers part of the problem.

B. REPORTS:

Direct Taxes Enquiry Committee (Wanchoo Committee), [6]

The Wanchoo Committee was one of the first official bodies to study tax evasion and the growth of unaccounted wealth in India. It linked evasion to very high marginal tax rates and weak enforcement, and it was critical of voluntary disclosure schemes because they appear to reward those who evade tax. For the present study, the Report shows that the policy debate on black money predates the 2015 Act by several decades and that earlier thinking placed considerable weight on rate rationalisation and administrative reform rather than on severe criminal sanctions alone. It therefore offers a historical baseline against which the deterrent approach of the Act may be assessed.

Law Commission of India, 47th Report, Trial and Punishment of Social and Economic Offences (1972)[7]

The Law Commission considered the character of economic offences and recommended that they be treated as serious wrongs against society, requiring effective trial and stricter punishment. The Report is relevant because it supplies the early institutional rationale for treating tax and economic offences severely, which later legislation, including the Black Money Act, builds on. It is also useful as a counterpoint, since it allows the study to ask whether that rationale has been balanced with the principles of proportionality and fairness in the design of the present provisions. The Report should therefore be read as part of the doctrinal background to the deterrence chapter.

Ministry of Finance, Government of India, White Paper on Black Money 2012.[8]

The White Paper presents the Government's account of the nature, sources and possible magnitude of black money, together with the existing legal and administrative measures against it. It is significant for the study because it records the policy case that preceded the 2015 Act and acknowledges the difficulty of measuring unaccounted income with confidence. This allows to examine whether the severity of the penal provisions rests on reliable evidence of the problem's scale. The document is a primary source for the legislative background and the stated objectives of the Act.

[3] Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* (Oxford Univ. Press 2008).
[4] Arun Kumar, *The Black Economy in India* (Penguin Books India 1999).
[5] Arun Kumar, *Understanding the Black Economy and Black Money in India: An Inquiry into Causes, Consequences and Remedies* (Aleph Book Co. 2017).
[6] Direct Taxes Enquiry Comm., *Final Report* (Gov't of India 1971).
[7] Law Comm'n of India, Report No. 47, *Trial and Punishment of Social and Economic Offences* (1972).
[8] Ministry of Fin., Gov't of India, *White Paper on Black Money* (2012)

Committee on Measures to Tackle the Menace of Black Money in India and Abroad, CBDT (2012)[9]
This Committee, constituted under the Central Board of Direct Taxes, examined measures to address black money held within India and abroad, including enforcement and legislative reform. Its relevance lies in the link between its recommendations and the later decision to legislate separately on undisclosed foreign income and assets. The study can use it to trace the legislative intent behind the 2015 Act and to assess whether the penalties and prosecutions subsequently enacted follow from the Committee's reasoning. It is an important source for the chapter on the object and scheme of the Act.

Standing Committee on Finance, Report on Mechanisms to Curb the Menace of Black Money (c. 2013)[10]
The Standing Committee on Finance reviewed the Government's efforts against black money and commented on gaps in enforcement, information exchange and the availability of reliable estimates. The Report is relevant because it represents parliamentary scrutiny of the problem shortly before the Act was introduced, and it reflects concern about the weakness of detection and follow-through. This supports the study's argument that the effectiveness of deterrence depends heavily on enforcement capacity and not only on the severity of the sanctions. It is a useful source for evaluating the strength of the Act's deterrent design.

C. ARTICLES:

Shobhit Mishra, "An Analytical Review of Penalty under Sections 42 & 43 of the Black Money Act" [2026][11]
The article reviews the penalty provisions of the Act. It contrasts the Act's deterrence-driven approach, which leaves limited room for the assessee's intent or proportionality, with the graded and discretionary penalties of the Income-tax Act. It is directly relevant to the proportionality limb of the study, because it supports the proposition that the penalty design of the Act does not engage with proportionality. It is also useful on s. 72(c): the author notes that treating the date of discovery as the date of acquisition allows the Act to avoid the usual bar on retrospective taxation. It is a practitioner article, so it should be cited as commentary rather than as authority.

Gaurav Jain, "Black Money Law – Prospective and Not Retrospective or Retroactive, An Arduous Plea" [12]
The author examines whether undisclosed income and assets acquired before the Act are covered by it. He argues that a contrary reading would violate Article 20(1) of the Constitution. The article predates the recent judicial decisions, which makes it useful for showing how the retrospectivity argument was first framed and for tracing its later acceptance and refinement by the High Courts and the Supreme Court. It supports the constitutional validity chapter, particularly on Article 20(1).

"Restricting Retrospective Application Under BMA is Much Appreciable But Still a Lot Remain Undecided"[13]

[9] Cent. Bd. of Direct Taxes, *Report of the Committee on Measures to Tackle the Menace of Black Money in India and Abroad* (2012).
[10] Standing Comm. on Fin., *Report on Mechanisms to Curb the Menace of Black Money]* (Lok Sabha Sec'y [2013])
[11] Shobhit Mishra, *An Analytical Review of Penalty under Sections 42 & 43 of the Black Money Act*, [2026] 184 taxmann.com 130 (India).
[12] Gaurav Jain, *Black Money Law – Prospective and Not Retrospective or Retroactive, An Arduous Plea*, ITAT Online (June 20, 2020), https://itatonline.org/articles_new/black-money-law-prospective-and-not-retrospective-or-retroactive-an-arduous-plea/.
[13] *Restricting Retrospective Application Under BMA Is Much Appreciable but Still a Lot Remain Undecided*, CBCL NLIU Bhopal, https://cbcl.nliu.ac.in/taxation/restricting-retrospective-application-under-bma-is-much-appreciable-but-still-a-lot-

This commentary examines the courts' restriction of the Act's retrospective application. It points to an ambiguity in legislative intent, because the language of the Act points towards prospective operation while the 2019 amendment implies retrospective operation. It is relevant because it identifies the unresolved questions that remain after the decisions, which supports the research gap on the Act's temporal reach and the status of s. 72(c).

Gary Becker, "Crime and Punishment: An Economic Approach" (1968)[14]

Becker models offending as a rational decision based on the likelihood of detection and the severity of punishment. It is the foundation of the deterrence chapter, because it lets you ask whether the Act's heavy sanctions or the probability of enforcement better explain compliance.

Michael Allingham and Agnar Sandmo, "Income Tax Evasion: A Theoretical Analysis" (1972)[15]

The authors apply the deterrence model specifically to tax evasion and show how audit probability, tax rates and penalties together affect the decision to evade. It is relevant because it ties the general theory to tax compliance and supports the point that penalty severity cannot work without effective detection.

1.4. RESEARCH GAP

Existing literature on the Black Money Act, 2015, primarily focuses on the taxation of undisclosed foreign assets and measures to combat tax evasion. However, limited integrated doctrinal analysis has been undertaken into the relationship between penalties, criminal prosecution, deterrence, and constitutional proportionality under the Act.

The study addresses the need to examine whether the severity of penalties and criminal punishments is proportionate to the nature of the default, particularly in distinguishing deliberate tax evasion from inadvertent non-disclosure. It also analyses constitutional concerns under Articles 14, 20(1), 20(2), and 21, along with recent legislative amendments and judicial interpretations, to evaluate whether the enforcement framework adequately balances effective tax enforcement with constitutional safeguards.

1.6. RESEARCH QUESTION:

1. What is the statutory framework governing penalties and prosecution under the Black Money Act, 2015?
2. To what extent do the penalty and prosecution provisions promote deterrence against the concealment of undisclosed foreign income and assets?
3. Are the penalties and criminal punishments prescribed under the Act proportionate to the nature and seriousness of the default?
4. Whether the penalty and prosecution provisions comply with Articles 14, 20(1), 20(2), and 21 of the Constitution of India?
5. What role have judicial decisions and legislative amendments played in determining the scope and constitutional validity of penalties and prosecution under the Act?

1.7. OBJECTIVES OF THE STUDY

1. To examine the statutory framework governing penalties and prosecution under the Black Money Act, 2015.
2. To analyse the deterrent purpose and effectiveness of the penalty and prosecution provisions.
3. To evaluate the proportionality of sanctions in relation to the nature and seriousness of non-compliance.

remain-undecided/

[14] Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. Pol. Econ. 169 (1968).

[15] Michael G. Allingham & Agnar Sandmo, *Income Tax Evasion: A Theoretical Analysis*, 1 J. Pub. Econ. 323 (1972).

4. To examine the constitutional validity of the enforcement provisions with reference to Articles 14, 20(1), 20(2), and 21 of the Constitution of India.
5. To analyse relevant judicial decisions and legislative amendments and suggest appropriate legal and procedural reforms.

1.8. RESEARCH METHODOLOGY:

The present study adopts a **doctrinal method of legal research** based on secondary sources. It examines the Black Money Act, 2015, relevant amendments, the Constitution of India, judicial decisions, books, journal articles, government reports, and other authoritative legal publications. The research employs statutory interpretation and critical legal analysis to evaluate the relationship between penalties, criminal prosecution, deterrence, proportionality, and constitutional safeguards. Relevant judicial decisions are analysed to understand the interpretation and application of the statutory provisions. The study does not involve primary data collection; therefore, conclusions concerning actual deterrent effectiveness are limited to the available legal and documentary evidence.

1.9. SCOPE OF THE STUDY:

The study focuses on the penalty and prosecution provisions of the Black Money Act, 2015, particularly the statutory framework governing monetary sanctions, criminal offences, and procedural safeguards. It examines the relevant constitutional principles under Articles 14, 20(1), 20(2), and 21, together with significant judicial decisions and legislative amendments. The study is limited to doctrinal analysis and relies on published legislation, judgments, books, articles, and official reports. It does not independently measure taxpayer behaviour or establish the empirical effectiveness of deterrence. Further, the interpretation of the Act may evolve through subsequent amendments and judicial decisions; accordingly, the analysis must be read in light of the legal position applicable to the period under examination.

1.10. SCHEME OF THE STUDY:

Chapter I: Introduction and Research Methodology

This chapter introduces the research problem, background, review of literature, research gap, research questions, objectives, hypothetical proposition, methodology, scope, limitations, and chaptalisation.

Chapter II: Statutory Framework of Penalties and Prosecution under the Black Money Act, 2015

This chapter examines the objectives and scope of the Act, taxation and assessment of undisclosed foreign income and assets, penalty provisions, criminal offences, prosecution procedures, and the relationship between civil penalties and criminal liability.

Chapter III: Deterrence and Proportionality of Penalties and Criminal Punishment

This chapter analyses deterrence as a principle of tax enforcement, the severity of monetary penalties, criminal prosecution as a deterrent mechanism, proportionality of punishment, the distinction between deliberate concealment and inadvertent non-disclosure, and the impact of legislative amendments.

Chapter IV: Constitutional Validity and Judicial Interpretation

This chapter evaluates the enforcement provisions in light of Articles 14, 20(1), 20(2), and 21 of the Constitution of India. It examines retrospective criminal liability, double jeopardy, procedural fairness, statutory presumptions, and relevant judicial decisions concerning the Act.

Chapter V: Findings, Suggestions and Conclusion

This chapter presents the major findings of the study, evaluates the legal justification for deterrent sanctions, identifies concerns relating to proportionality and constitutional safeguards, and proposes legislative and procedural reforms before drawing the overall conclusion.

CHAPTER-II
STATUTORY FRAMEWORK OF PENALTIES AND PROSECUTION UNDER THE BLACK MONEY ACT, 2015

2.1 Objectives and Scope of the Black Money Act, 2015:

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015[16] was enacted to address the problem of undisclosed foreign income and assets held by Indian residents. This Act was enacted to separate the taxation and the Enforcement mechanism which will lead to strengthens the disclosure of undisclosed foreign assets and income. The act came into force on 1st April, 2016.

This Act speaks about the imposition of tax for the undisclosed wealth under the section 3[17] which states that tax of 30% will be imposed on the wealth which was acquired by the defaulter or the offender. This legislation also addresses about the assessment, recovery, monetary penalties, and criminal prosecution. The Enforcement measures reflect on the objective of ensuring compliance through financial consequences and criminal sanctions. Nevertheless, the application of these measures raises questions concerning the severity of punishment, the nature of the default, and the safeguards available to taxpayers. These issues form the statutory foundation for examining deterrence and proportionality under the Act.

2.2 Taxation and Assessment of Undisclosed Foreign Income and Assets:

Sections 3 to 5 establish the basis for charging tax and determining the scope and computation of undisclosed foreign income and assets[18]. Section 3 provides for taxation at 30%, while section 4 addresses the scope of total undisclosed foreign income and assets. Section 5 provides the framework for computation.

Section 10 governs assessment, while the subsequent provisions address matters including time limits, rectification, recovery, and appeals.[19] These provisions are significant because the determination of undisclosed foreign income and assets may form the basis for consequential penalties and prosecution. The statutory assessment process must therefore be distinguished from the separate determination of liability for a penalty or criminal offence.

The Act also contains provisions concerning tax recovery and related liabilities. The existence of an assessment or tax demand does not, by itself, establish every element of a criminal offence. The applicable statutory requirements must be independently satisfied before criminal punishment can be imposed.

2.3 Penalty Provisions under Sections 41–47:

Chapter IV of the Act contains the principal provisions governing monetary penalties. Section 41 provides that, where tax has been computed under section 10 in respect of undisclosed foreign income and assets, the Assessing Officer may impose a penalty equal to three times the tax computed, in addition to the tax payable.[20] The provision creates a substantial financial consequence for undisclosed foreign wealth and reflects the deterrent purpose of the legislation.

Sections 42 and 43 address specific disclosure defaults[21]. Section 42 concerns failure to furnish a return in circumstances involving foreign income or assets, while section 43 concerns failure to disclose, or the

[16] *The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015*, No. 22 of 2015, § 1(3)
[17] *Id.* §§ 3, 41, 48–58.
[18] *Id.* §§ 3–5.
[19] *Id.* §§ 10–27.

[20] *Id.* § 41.
[21] *Id.* §§ 42–43.

furnishing of inaccurate particulars relating to, foreign assets or income in a return. Both provisions prescribe a penalty of ₹10 lakh, subject to their statutory requirements and exceptions.

An important legislative development occurred through the Finance (No. 2) Act, 2024[22]. With effect from 1 October 2024, the provisos to sections 42 and 43 were amended so that these penalty provisions do not apply to foreign assets other than immovable property where their aggregate value does not exceed ₹20 lakh. This amendment introduces a value-based distinction for specified non-immovable assets and is relevant to evaluating proportionality.

Section 44 addresses defaults in payment of tax arrears, while section 45 provides penalties for specified failures to comply with requirements of tax authorities without reasonable cause. Under section 45, the penalty ranges from ₹50,000 to ₹2 lakh. Section 46 prescribes the procedure for imposing penalties, including notice and an opportunity of being heard. Section 47 governs the limitation period for imposing penalties.[23]

These provisions demonstrate that the Act contains different sanctions for different categories of non-compliance. Their proportionality must be evaluated by considering the nature of the default, the statutory purpose, and the procedural protections provided.

2.4 Offences and Prosecution under Sections 48–58:

Chapter V of the Act establishes criminal liability for specified conduct. Section 48 clarifies the relationship between this chapter, other laws, and other provisions of the Act. Sections 49 and 50 address failure to furnish a return in relation to foreign income and assets and failure to disclose relevant foreign assets or income in a return.[24] The prescribed punishment includes rigorous imprisonment for a term of six months to seven years and a fine, subject to the statutory requirements.

The Finance Act, 2026 introduced an important amendment by inserting value-based exceptions into sections 49 and 50, with retrospective effect from 1 October 2024[25]. Under these amendments, the relevant prosecution provisions do not apply to foreign assets other than immovable property where their aggregate value does not exceed ₹20 lakh. This change aligns the prosecution framework with the value-based exception already introduced for penalties under sections 42 and 43.

Section 51 addresses wilful attempts to evade tax, section 52 deals with false statements in verification, and section 53 concerns abetment of specified offences. Section 54 establishes a statutory presumption concerning culpable mental state, while section 55 regulates the sanction required for prosecution. Section 56 addresses offences by companies, section 57 concerns proof of entries in records or documents, and section 58 prescribes enhanced punishment for second and subsequent offences.[26]

The prosecution provisions reflect the seriousness with which the legislature treats deliberate concealment and evasion. However, their application must remain within the limits prescribed by the statute and the Constitution. In particular, the requirement of wilfulness in specified offences and the operation of statutory presumptions require careful examination when assessing criminal liability.

2.5 Procedural Safeguards in Penalty and Prosecution Proceedings:

Procedural safeguards are essential to ensure that enforcement powers are exercised lawfully. Section 46 requires a notice to show cause before a penalty is imposed and provides that an order imposing a penalty

[22] *The Finance (No. 2) Act, 2024*, No. 15 of 2024, § 164
[23] Black Money Act, 2015, §§ 44–47.
[24] *Id.* §§ 49–50.
[25] *The Finance Act, 2026*, § 144 (India) (amending §§ 49–50 of the Black Money Act, 2015, with retrospective effect from 1 October 2024).
[26] Black Money Act, 2015, §§ 51–58.

cannot be made without giving the assessee an opportunity to be heard. It also prescribes approval requirements for specified penalty orders.[27] These safeguards support procedural fairness by allowing the affected person to respond to the allegations and contest the proposed sanction.

Section 55 requires the prescribed sanction for prosecution under sections 49 to 53. This requirement provides an institutional check before criminal proceedings are initiated.[28] Nevertheless, the practical adequacy of procedural safeguards depends on their proper application, the clarity of the allegations, and the opportunity available to the accused to contest the prosecution.

These safeguards are particularly important where the same underlying facts may give rise to assessment, monetary penalties, and criminal proceedings. Each process must comply with the legal requirements applicable to it.

2.6 Relationship between Civil Penalties and Criminal Prosecution:

The Black Money Act provides for both monetary penalties and criminal prosecution, but the two mechanisms serve distinct legal functions. Penalties impose financial consequences for specified defaults, whereas prosecution addresses conduct that satisfies the elements of a statutory criminal offence. Their coexistence reflects the legislature's objective of strengthening compliance and responding to serious concealment.

However, the availability of both mechanisms raises questions concerning proportionality and procedural fairness. A failure to disclose foreign assets may have different circumstances, ranging from deliberate concealment to inadvertent non-disclosure. The applicable statutory provisions, including the requirements of wilfulness and the relevant monetary thresholds, must therefore be carefully considered before determining liability.

The amendments introduced in 2024 and 2026 demonstrate legislative movement towards differentiating certain cases according to the aggregate value and nature of foreign assets.[29] Such distinctions are relevant to assessing whether the enforcement framework appropriately balances deterrence with fairness. Ultimately, the statutory scheme must be interpreted and applied consistently with constitutional safeguards and the principle that criminal punishment requires proof of the offence in accordance with law.

CHAPTER-III

DETERRENCE AND PROPORTIONALITY OF PENALTIES AND CRIMINAL PUNISHMENT

3.1. Concept of Deterrence in Tax Enforcement:

In the taxation law, Deterrence principle plays an important role in the enforcement proceedings. It also useful for the legal consequences to identify the individual from violating the statutory framework. In this context the undisclosed foreign assets and the income will be deterrent which will leads to the discourage the taxpayers from failing to disclose the concealing the foreign assets, deliberately evading the tax liabilities and also unreported assets from their liability. To curb the undisclosed foreign assets of the resident by this country, this act was enacted with the stringent enforcement framework with the monetary penalties and also the criminal prosecution.

[27] *Id.* § 46.

[28] *Id.* § 55.

[29] *The Finance (No. 2) Act, 2024*, No. 15 of 2024, § 164; *The Finance Act, 2026*, § 144

According to this deterrent principle it has certain effects that depends on the several factors by the means of severity in penal provisions, detection in case of criminal liability, and also the time period which has taken to complete the proceedings will be come into the play. In this context, the severity of the punishment will lead to the deliberate evasion of the assets and income also the effectiveness of the enforcement cannot be relied only on the penalty or imprisonment. The effectiveness of the procedure, enforcement will be important but that should also be consistent with the application of the law on the other hand.

The act addresses both the monetary and the criminal liability to the undisclosed foreign income and assets. In that particular section 41 of this act speaks about the penalty provision which will be three times equal to the tax computed under the section 10, with the tax payable[30]. This financial consequence is intended to deter the concealment of the non-compliance of economically disadvantageous assets and income. To prosecute the offenders this statute has prescribe the provisions under section 49 to 53 it acts as an additional deterrent against the serious violations of concealment of assets and income[31].

The deterrence principle must operate with legality with its limitation and fairness in the enforcement. The act which imposes severity in the penalty and imprisonment should able to distinguish between the different statutory defaults may create uncertainty in the enforcement and also on the other hand it should impose the appropriate burden in their particular cases. Therefore, the deterrence's effectiveness must be examined with the nature of the violation, applicable statutory requirements and availability of procedural safeguards.

3.2 Nature and Severity of Monetary Penalties:

Under the Black Money Act, the penal provisions imposed the stringent penalty for the non-compliances of the undisclosed foreign assets and income by the resident of the India. The provisions cover under the Chapter IV of this act under the section 41- 47. Section 41 deals with the penalty for the non-compliances of the undisclosed foreign assets and income which will be equal to three times of the tax computed under section 10 of this act which was additional from the tax payable by the defaulter[32].

The monetary penalty is severe in nature by the means of strong deterrent effects in case of the concealment of the undisclosed wealth by the assessee. In this regard the important question has argued by the critics that relationship between the value of the undisclosed assets, tax liability and the additional penalty imposed. Therefore, the financial burden lies on the assess to satisfy the tax liability with the addition penalty.

The failure to furnishing of the returns and also the disclosure of foreign assets or income comes under the section 42 and 43 of the Black Money Act. This act also intended to distinguish certain low value cases from the serious ones in the compliance's mechanisms. The Finance Act, 2024 introduced the exemption for the specified foreign assets in that it doesn't include the immovable property where that shouldn't exceed more than ₹20 lakh[33]. However, the Finance Act, 2026 has bought certain amendments in to the prosecution provisions under the section 49 and 50 which will have the retrospective effect from the 1st of October 2024[34].

[30] *Id.* § 41.
[31] *Id.* §§ 49–53.

[32] *Id.* § 41.
[33] *The Finance (No. 2) Act, 2024*, No. 15 of 2024, provision amending § 42 and § 43 of the Black Money Act, 2015
[34] *The Finance Act, 2026*, provision amending §§ 49–50 of the Black Money Act, 2015, with retrospective effect from 1 October 2024

The principle of proportionality was developed alongside with the statutory framework by the means of recognizing the value and nature of an undisclosed assets and income in the form of material while determining the consequences of non-disclosed of the assets. The act doesn't automatically invalid other requirement for the application in the particular case, while this act determining the monetary threshold

In the case of Union of India v. Dharamendra Textile Processors[35] deals about the civil tax liabilities. In that context, it addresses that the breach of the statutory compliance or obligation will create the civil liability also the proof of mens rea is not necessary unless it has mentioned in that particular legislation. This principle must be applied with reference to the particular language and structure of the statute concerned. It does not mean that every penalty under every taxation law is automatic or that procedural fairness can be disregarded. The severity of the monetary penalty will be checked in accordance with the purpose of the provision, conditions imposed in the statue in terms of penalty and also the available safeguards to the affected party should be checked timely by the authorities while complying with the Black Money Act.

3.3 Criminal Prosecution as a Deterrent Mechanism:

Under the Black Money Act, Chapter V deals with the Offences and prosecution in that provision covers from section 48-58. In case of Criminal Prosecution comes under the section 49-53 which deals with the offences relating to the failure of disclosing the returns, attempt to evade the tax, false claim in their statement and also abetment. The imprisonment may consider has the stringent punishment but it strengthens the legal framework as the form of deterrence's when there is the deliberate concealment of the foreign wealth. However, the procedure for the criminal and civil is different in nature by the means of legal consequences and the requirement of proof.

In Gujarat Travancore Agency v. Commissioner of Income Tax[36], the supreme court held that, there is an difference between civil penalty liability and with the criminal punishment in the context of Income Tax Act, 1961. The statutory language and the nature of the proceeding determine whether proof of mens rea is required which was also mentioned in the case of Dharamendra textile processors were they said absence of the mens rea in the civil penalty is not necessary that doesn't apply to the criminal proceedings[37].

Section 51 deals with the punishment for the wilful attempt to evade tax with the punishment of rigorous imprisonment for the term not less than three months and that shall extent to three years can also be liable to pay fine also the court has the discretion to determine[38]. In the context of wilful attempt to evade tax includes the possession or control of the account book which contain false record, makes or cause to made false entry, wilfully omits of relevant entry or causes any other circumstances to exist which will have the effect of enabling such person to evade tax will also be punishable under this provision.

Section 52 deals with the punishment for the making the false statement in any verification and section 53 deals with punishment for abetment this each provision has the same punishment of rigorous imprisonment for six months which can be extended to seven years, and also liable to fine[39].

Section 55 deals with the sanction for the prosecution done by the principal chief commissioner or chief commissioner or Principal Commissioner or Commissioner by the means of instructions, or directions to the tax authorities if he thinks that institution for the criminal proceedings[40]. Also, this provision speaks

[35] *Union of India v. Dharamendra Textile Processors*, (2008) 13 SCC 369
[36] *Gujarat Travancore Agency v. Commissioner of Income Tax*, (1989) 3 SCC 52
[37] *Dharamendra Textile Processors*, (2008) 13 SCC 369.
[38] *Id.* § 51.
[39] *Id.* § 52 and 53.
[40] *Id.* § 55.

about the power of the board to issue order, instruction and also the direction which is similar to the context of commissioners. Therefore, the criminal prosecution has the deterrent effects when it's applied in accordance with the statute.

3.4 Proportionality between Nature of Default and Severity of Punishment:

In the accordance of the tax law, the principle of proportionality requires the amount of tax payable, the value of the undisclosed foreign assets and income, the character of default, purpose behind it and also the legal consequences imposed on the tax payer will be checked in this regard. This principle doesn't only identify the penalty for the identical to the loss of revenue but also required to check the statutory framework and its application.

In the case of Bhagat Ram v. State of Himachal Pradesh[41], supreme court recognised that penalty should match the gravity of the misconduct because it may lead to the violation Article 14 of the Indian Constitution. Even though the case doesn't come under preview of the Black Money Act, but the reasoning in the judgment is relevant to the constitutional evaluation of the punitive measures. By stating that the sanction must be proposition to the assesses misconduct while applying the legislation.

In this context, Section 41 of the Act speaks about the penalty directed by the Assessing Officer for the undisclosed foreign assets and income in addition to that the defaulter has to pay the sum which is equal to three times the tax has computed under his tax liability. This provision doesn't adopt the separate assessment for the tax defaulter but it rather established the statutory formula in every case. For the adoption of the procedure safeguard which was mentioned under the Section 46 of this act by prescribing the conditions to be satisfied[42].

Under the section 42 and 43 the threshold limit has been posted for the immovable foreign assets for the specific of ₹20 lakh which has followed by section 49 and 50, it illustrates about the attempt to distinguish certain low valued cases from failing outside the exception[43]. When the threshold limit is statutory wording which cannot be interpreted as the blanket exemption. At the same time, it distinguishes its proportionality to specific penalties and prosecution for the defined category of the assets under this act.

In case of the civil penalty and the criminal prosecution here comes the role of proportionality analysis because it has to been distinguished, where the monetary penalty will be applied to those breaches the statutory obligation while the criminal punishment will be imposed when there is need of prosecution to find the established ingredients to the particular offence. However, without knowing the differences and applying the same of both would obscure the purpose and objective of each mechanism.

3.5 Distinction between Wilful Concealment and Inadvertent Non-Disclosure:

There is a significant difference between the wilful concealment and inadvertent non- disclosure because the act punish the one with wilful concealment in that content, deliberate concealment includes the intentionally withholding information of foreign assets and income to evade the tax was their main purpose behind their deliberation will involve the submitting of the false information or engaging in conduct designed to evade the tax. On the other hand, there comes inadvertent non- disclosure, which is intention is not to evade the tax but there will be certain misunderstanding in reporting obligation, error in the return or failed to recognized the legal requirement of the foreign assets or income. Therefore, the punishment will be imposed according to the statutory wording and also the evidence of the case.

[41] *Bhagat Ram v. State of Himachal Pradesh*, (1983) 2 SCC 442
[42] Black Money Act, 2015, §§ 41, 46.
[43] *The Finance (No. 2) Act, 2024*, No. 15 of 2024, provisions amending §§ 42–43; *The Finance Act, 2026*, provisions amending §§ 49–50.

The offences should establish that it has done with intention to evade the tax which has to be wilful attempt because the seriousness of a criminal sanction makes them inappropriate to assume that every incorrect disclosure doesn't necessarily establishes the required criminal intent. As said earlier, the civil penalty and criminal punishment has to be in proportional analysis which was explained in the case of Dharamendra textile processors[44], it held that mens rea is not essential condition for imposing the penalty for the breach of the statutory obligation.

CHAPTER IV
CONSTITUTIONAL VALIDITY AND JUDICIAL INTERPRETATION
4.1 Constitutional Validity under Article 14: Equality, Non-Arbitrariness and Proportionality:

Under Indian constitution part III deals about the fundamental rights in specific, Article 14 guarantees the equality before law and equal protection of laws. In this context, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 should be tested because legislature has the power to enact laws with the stringent punishment for the non-disclosure of the foreign assets and income but is has to be satisfy the constitutional test of reasonableness and non- arbitrariness.

The act establishes the separate statutory framework for the taxing, imposing monetary penalty and also the criminal punishment for the non-disclosed foreign assets or income. The classification should have the rational relationship with the objective of the act because the imposition of different default has to be different consequences rather that same punishment and penalty. If it is unrelated then that will result in the arbitrary treatment that's where Article 14 comes in play.

In E.P. Royappa v. State of Tamil Nadu[45], the Supreme Court explained that arbitrariness is inconsistent with equality and that Article 14 is not confined merely to the traditional test of reasonable classification. This principle is important and relevant while examining the enforcement authorities exercise their powers fairly and consistently under the act.

In Om Kumar v. Union of India,[46] the Supreme Court discussed proportionality in administrative law and explained its relationship with judicial review of State action. The proportionality principle is to be checked by the means of the consequences imposed by the state on the action of the defaulters were reasonable and legitimate in nature because this act prescribes the sever monetary penalty and criminal punishment should be examined. Under section 41 it imposes penalty which is three times the tax computed under section 10 with the tax payable. Section 42 and 43 imposes penalty on failure to furnish the returns. While section 49 to 53 imposes criminal prosecution for the offences specified[47]. The objective of the act is to prevent then concealment and tax evasion.

In case of non- immovable foreign assets, the amendment was made with the fixed threshold limit of ₹20 lakh. The Finance Act, 2024 introduced the exception for penalties under section 42 and 43, also the Finance Act, 2026 introduced corresponding amendments in section 49 and 50 with the retrospective effect from 1st October 2024[48]. These amendments are also subjected to the analyses under Article 14 because it

[44] *Dharamendra Textile Processors*, (2008) 13 SCC 369.

[45] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.
[46] *Om Kumar v. Union of India*, (2001) 2 SCC 386.
[47] *The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015*, No. 22 of 2015, §§ 41–43, 49–53
[48] *The Finance (No. 2) Act, 2024*, No. 15 of 2024, provision amending §§ 42–43 of the Black Money Act, 2015; *The Finance Act, 2026*, provision amending §§ 49–50 of the Black Money Act, 2015

created the value- based distinction for the specified assets and it also recognized the low value disclosures defaults with different in treatment.

The monetary threshold doesn't automatically resolve the question of equality or proportionality under Article 14 but it states about implementing them in the non-arbitrary manner by means of the constitutional assessment which, by testing the statutory classification with rational requirement prescribed in the objective of the act by preventing the undisclosed foreign wealth. Even though, legislation has the stringent punishment the enforcement authorities must apply them with fairly, consistently, and reasonably.

4.2 Protection against Retrospective Criminal Liability under Article 20(1):

The Black Money Act, 2015 came into force on 1st April 2016. It deals with taxation of undisclosed foreign assets or income by the resident of India which includes stringent punishment like monetary penalty for the civil liability and criminal punishment with prosecution. Under the section 72(c) of the act speaks about the retrospective effect by addressing certain circumstances involving assets acquired before the commencement of the act will also be subjected to prosecution under this provision also the defaulter has to give the explanation on which year the property has by acquired and by what means will be checked by the enforcement authorities[49].

Under the Indian constitution, Article 20(1) guarantees protection against ex post facto criminal laws. Which means it prohibit the conviction of the act which was not even an offence at the time being also it prohibits the commission of imposing the penalty which was greater than what it should be imposed under the law commencement at the time of the offences. This Article examines the acts retrospective effect in the constitutional framework and its validity of the act.

The major question arises that does the tax laws can have the retrospective effect by violating the Article 20(1)? In this context, there is a clear distinction between the retrospective taxation and the retrospective criminal liability. In this manner, the legislature has the constitutional limitation over enacting the law which should prohibit the retrospective creation of criminal offences and enhancement of the criminal punishment. Therefore, the assets acquired before the commencement of the act does not by itself, answer whether a later failure to disclose that asset constitutes an offence.

In Rao Shiv Bahadur Singh v. State of Vindhya Pradesh[50], the Supreme Court explained the constitutional prohibition against retrospective criminal liability and recognised that a person cannot be convicted for an act that was not an offence when it was committed.

A significant decision concerning the Black Money Act is Union of India v. Gautam Khaitan[51]. In the supreme court it has challenged that operation of the act will be on 1st July 2015, instead of date mentioned in the section 1(3) of this act. In this context, the Supreme court examined the statutory framework with the purpose of the change of the commencement date. It held that, under section 59 it speaks about the one-time declaration opportunity which would only benefit the tax payer and its was not intent to make penal provision with retrospective effect. It addresses the major question, in terms of retrospective application of the commencement date will not automatically apply to the penal provision.

Another important decision is Dhanashree Ravindra Pandit v. Income Tax Department[52], decided by the Karnataka High Court in 2024. The case concerned prosecution under the Black Money Act in relation to

[49] Black Money Act, 2015, § 72(c).

[50] *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, AIR 1953 SC 394

[51] *Union of India v. Gautam Khaitan*, Criminal Appeal No. 1563 of 2019

[52] *Dhanashree Ravindra Pandit v. Income Tax Department*, Criminal Petition Nos. 101845 of 2019 & connected matters (Karnataka High Court, June 7, 2024).

foreign assets and non-disclosure relating to assessment years preceding the commencement of the legislation. The High Court held that criminal prosecution could not be sustained in the circumstances before it where the alleged non-disclosure related to a period when the relevant statutory criminal liability was not in force. It also examined the application of section 72(c) in the context of Article 20.

However, the Supreme Court subsequently stayed the relevant observations of the Karnataka High Court in its interim order dated 23 August 2024[53]. Therefore, the High Court's observations on Article 20(1) should not be presented as an unqualified final declaration governing all proceedings under the Black Money Act. The Supreme Court's interim order must be disclosed when discussing the present precedential position.

The retrospective criminal liability under the act was examined by stating the date of acquisition of the asset, the relevant disclosure obligation, the date of alleged failure, and also the date on which the criminal provision came into force. So, we cannot arbitrarily state that retrospective effects had the violation of constitutional protection under the Article 20(1).

4.3 Protection against Double Jeopardy under Article 20(2) and Procedural Fairness under Article 21:

Under the Indian Constitution, Article 20(2) speaks that no person shall be prosecuted or punished for the same offence twice. It was also called as principle of double jeopardy. The Black Money Act includes tax assessments, imposition of monetary penalty, criminal prosecution and also the recovery of the assets. The existences of this multiple procedure under this act don't amount to the double jeopardy.

In Maqbool Hussain v. State of Bombay[54], the Supreme Court explained that the protection against double jeopardy under Article 20(2) applies where a person has been prosecuted and punished in a previous proceeding before a court or judicial tribunal. The Court distinguished such criminal proceedings from confiscation proceedings conducted by customs authorities. The decision is relevant because it establishes that every adverse proceeding or financial consequence does not necessarily amount to prosecution and punishment for an offence.

Similarly, in S.A. Venkataraman v. Union of India[55], the Supreme Court held that departmental proceedings do not ordinarily constitute prosecution for an offence within the meaning of Article 20(2). The distinction is important in the context of the Black Money Act because assessment and penalty proceedings are generally fiscal or civil in character, whereas prosecution under sections 49 to 53 involves criminal liability.

Article 21 of the Indian constitution, states that no person shall be deprived of life or personal liberty except according to procedure established by law. Under this Article the procedure taken place by the enforcement authorities should satisfy the legality and fairness in nature. In Maneka Gandhi v. Union of India[56], the Supreme Court expanded the interpretation of Article 21 and held that the procedure established by law must be fair, just, and reasonable and cannot be arbitrary or oppressive. The Court also recognised the interrelationship between Articles 14, 19, and 21. This principle is relevant when examining the procedures followed in initiating prosecution and imposing criminal punishment under the Black Money Act.

[53] *Income Tax Department v. Dhanashree Ravindra Pandit*, order dated Aug. 23, 2024 (Supreme Court of India) (staying the relevant observations of the Karnataka High Court concerning Article 20).
[54] *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325
[55] *S.A. Venkataraman v. Union of India*, AIR 1954 SC 375
[56] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

CHAPTER V
FINDINGS, SUGGESTIONS / RECOMMENDATIONS AND CONCLUSION

5.1 Findings of the Study:

The study finds that the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 establishes a stringent framework of taxation, monetary penalties, and criminal prosecution to prevent the concealment of foreign income and assets. Section 41 prescribes a penalty equal to three times the tax computed under section 10, while sections 42 and 43 provide penalties for specified disclosure-related defaults. The subsequent introduction of the ₹20 lakh threshold for specified foreign assets reflects an effort to distinguish certain lower-value cases from more serious instances of non-compliance.

The study further finds that civil penalties and criminal prosecution serve distinct purposes. While civil penalties may arise from statutory defaults, criminal prosecution requires proof of the ingredients of the relevant offence. The distinction between deliberate concealment and inadvertent non-disclosure is therefore important, particularly where wilfulness is an element of the offence.

The constitutional analysis establishes that the enforcement provisions must comply with Articles 14, 20(1), 20(2), and 21 of the Constitution. The application of section 54 and the requirement of prosecution sanction under section 55 also require careful scrutiny. Judicial decisions, particularly Union of India v. Gautam Khaitan, provide guidance on the prospective operation of penal provisions. The observations in Dhanashree Ravindra Pandit must be read subject to the Supreme Court's subsequent stay. Finally, the study finds that the actual deterrent effectiveness of the Act cannot be established through doctrinal research alone.

5.2 Suggestions / Recommendations:

In light of the findings, the following suggestions and recommendations are made to improve the effectiveness, fairness, and constitutional compliance of the enforcement framework under the Black Money Act, 2015:

1. **Differentiation between deliberate concealment and inadvertent non-disclosure:** The enforcement framework should clearly distinguish intentional concealment from genuine reporting errors or inadvertent non-disclosure, wherever the statutory provisions permit such consideration. This would help ensure that the consequences imposed are appropriate to the nature of the violation.
2. **Proportionate application of monetary penalties:** The authorities should apply penalty provisions strictly in accordance with their statutory requirements. Where discretion is available, relevant circumstances such as the nature of the default, value and character of the foreign asset, and explanation offered by the assessee should be considered through reasoned decisions.
3. **Strengthening procedural safeguards:** The opportunity of hearing under section 46 should be effectively implemented by providing adequate notice, access to relevant material, reasonable time to respond, and genuine consideration of the assessee's explanation before imposing a penalty.
4. **Careful application of criminal prosecution:** Criminal prosecution should be initiated only when the ingredients of the relevant offence are supported by the available material. An incorrect return or failure to disclose an asset should not automatically be treated as proof of a criminal offence without satisfying the applicable statutory requirements.
5. **Judicial scrutiny of statutory presumptions:** Courts should ensure that the presumption under section 54 is applied within its statutory limits. The foundational facts necessary to invoke the presumption must be established, and the accused must be afforded a meaningful opportunity to rebut it in accordance with section 54(2).

6. **Independent consideration of prosecution sanction:** The sanctioning authority under section 55 should independently examine the relevant facts, evidence, and ingredients of the alleged offence before granting sanction. A reasoned sanction process would help prevent unnecessary or legally unsustainable prosecutions.
7. **Periodic review of monetary thresholds:** The ₹20 lakh threshold applicable to specified foreign assets should be periodically reviewed in light of changing economic conditions, asset values, and practical disclosure requirements. The legislature should also provide clarity regarding the treatment of different categories of foreign assets.
8. **Clarity regarding retrospective amendments:** Legislative amendments should expressly identify their commencement dates, retrospective operation, and application to pending proceedings. This would reduce uncertainty and ensure that taxpayers and enforcement authorities can identify the applicable legal position.
9. **Maintaining the distinction between civil and criminal liability:** Civil penalty proceedings and criminal prosecution should be treated as separate legal mechanisms. The imposition of a civil penalty should not automatically establish criminal culpability, and each proceeding should satisfy its respective statutory and evidentiary requirements.
10. **Improving taxpayer awareness and compliance:** The tax administration should strengthen guidance regarding foreign asset disclosure obligations, reporting requirements, and the consequences of non-compliance. Clear instructions and accessible compliance mechanisms may reduce inadvertent defaults and encourage voluntary compliance.

These recommendations seek to preserve the legislative objective of preventing undisclosed foreign income and assets while ensuring that penalties and prosecution are imposed fairly, consistently, and in accordance with constitutional principles.

5.3 Conclusion:

The Black Money Act, 2015 is an important legislative measure for preventing the concealment of undisclosed foreign income and assets. Its penalty and prosecution provisions seek to strengthen tax enforcement through financial and criminal consequences. However, the effectiveness of these provisions depends on their fair, proportionate, and constitutionally compliant application.

The study concludes that deterrence and proportionality must operate together. While stringent sanctions may be justified to prevent deliberate tax evasion, the distinction between civil liability and criminal culpability must be maintained. The enforcement framework must also comply with Articles 14, 20(1), 20(2), and 21 of the Constitution.

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