



Bringing back black money

BY K P SHASHIDHARAN

The Indian Parliament's deep concern about the issue of corruption was probably reflected in the hubbub at the beginning of the winter session with the Opposition members holding black umbrellas with slogans "bring back black money" painted on them. The citizens of the country get dumbfounded looking at the idiot box thinking of the mysterious unsolved puzzles: who are those money launderers? What is the extent of money kept in Swiss banks? How could they amass so much wealth? Will these questions ever be answered and the unaccounted money brought back to home? It is quite a ripe time now to discuss some of the enabling provisions of the United Nations Convention against Corruption (UNCAC), the first legally binding international anti-corruption instrument.

The UN General Assembly adopted the UNCAC in 2003. India ratified the convention in 2011, reaffirming its commitment to fight corruption. Appointment of a Special Investigative Team by the UPA Government to study the ways and means to bring the illegal money kept abroad by money launderers back to India reinforces the country's stand on the issue. The UNCAC requires that the nations must implement requisite anti-corruption measures in alignment with the laws, institutions and practices aiming at preventing corruption, strengthening international law enforcement and judicial cooperation, providing effective legal mechanisms for asset recovery, technical assistance and information exchange, and mechanisms for implementation of the Convention.

The UNCAC deals with five major domains: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange and encompassing both mandatory and non-mandatory provisions. Various forms of corruption such as trading in influence, abuse of function, and other types of corruption in the private sector are included. Chapter V exclusively deals with asset recovery as a "fundamental principle" of the Convention. The provisions on asset recovery lay a framework, in both civil and

criminal law, for tracing, freezing, forfeiting and returning funds obtained through corrupt activities. The requesting State will in most cases receive the recovered funds as long as it can prove ownership.

Article 59 of the UNCAC covers asset recovery stating that the countries "shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention". These arrangements can help recovery of assets. The countries which have enacted domestic legislation to implement multilateral or other regional agreements or bilateral agreements containing asset recovery provisions may review and if need be introduce suitable amendments for the purpose. Agreements may specify commitments of the countries on how to implement the provision contained in Chapter V of the UNCAC. The agreements may specify limits on the confidentiality and speciality principles within the implementation of Article 56 on special cooperation, or Article 58 concerning the cooperation between Financial Intelligence Units to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

For a wider knowledge of the specific bilateral and multilateral agreements, and the implementing domestic legislations, regional or international organizations and State parties may consider publishing these legal provisions in a user-friendly website for citizens in general. In any case, Article 55 requires all State parties to send to the United Nations copies of all relevant treaties and agreements. In the area of law enforcement, the UNCAC calls for better cooperation between national and international bodies and with civil society. There is a provision for the protection of witnesses, victims, expert witnesses and whistleblowers to ensure that law enforcement is truly effective. The agreement on asset recovery is one of the reasons why many developing countries have signed the UNCAC. ■

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