



## Pandora Papers Leak

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 [drishtiias.com/printpdf/pandora-papers-leak](https://drishtiias.com/printpdf/pandora-papers-leak)

### Why in News

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Recently, several prominent Indian names have been included in the **Pandora Papers leak**.

- There are over **300 Indian names** in the leak, including over **60 prominent ones**.
- Pandora Papers are **11.9 million leaked files from 14 global corporate services firms** which set up about 29,000 **off-the-shelf companies and private trusts**.

### Trust

- **About:**
  - A trust can be described as a **fiduciary arrangement where a third party, referred to as the trustee, holds assets** on behalf of individuals or organisations that are to benefit from it.
  - A trust is **not a separate legal entity, but its legal nature comes from the 'trustee'**. At times, the 'settlor' appoints a 'protector', who has the powers to supervise the trustee, and even remove the trustee and appoint a new one.
- **Indian Law:**

The **Indian Trusts Act, 1882**, gives legal basis to the concept of trusts. Indian laws **recognise the trust as an obligation of the trustee** to manage and use the assets settled in the trust for the benefit of 'beneficiaries'. India also recognises offshore trusts.

### Off-the-Shelf Company

An 'off-the-shelf' company or **ready-made company is a pre-registered limited company**, however, it has never been traded. An 'off-the-shelf' company is **ready for immediate use** and can be purchased after paying a certain cost for it.

### Key Points

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- **About:**

- The Pandora Papers **reveal how trusts are used as a vehicle in conjunction with offshore companies set up for the sole purpose of holding investments and other assets by business families and ultra-rich individuals.**
  - The trusts can be set up in known **tax havens which offer relative tax advantages.**
  - **For Example:** Samoa, Belize, Panama, and the British Virgin Islands.
- They reveal **how the rich set up complex multi-layered trust structures for estate planning**, in jurisdictions which are loosely regulated for tax purposes, but characterised by air-tight secrecy laws.
- Businesses have created **a new normal** after countries have been forced to tighten the laws on such offshore entities with rising concerns of **money laundering, terrorism funding, and tax evasion.**
  - The **Panama and Paradise Papers** dealt largely with offshore entities set up by individuals and corporations respectively.

- **Reasons for Setting up Trusts Overseas:**

- **Secrecy:**
  - Overseas trusts offer remarkable secrecy because of **stringent privacy laws** in the jurisdiction they operate in.
- **Maintain a Degree of Separation:**
  - Businesspersons set up private offshore trusts to project a degree of **separation from their personal assets.**
- **Avoid Tax in the Guise of Planning:**
  - Businesspersons avoid their Non-resident Indians (NRI) children being taxed on income from their assets by transferring all the assets to a trust.
- **Prepare for Estate Duty Eventuality:**
  - There is a pervasive **fear that estate duty**, which was abolished back in 1985 will likely be re-introduced soon.
  - Setting up trusts in advance will **protect the next generation from paying the death/inheritance tax**, which was as high as 85% in the more than three decades after its enactment (The Estate Duty Act, 1953).
- **Flexibility in a Capital-Controlled Economy:**
  - India is a **capital-controlled economy**. Individuals can invest only USD 2,50,000 a year under the **Reserve Bank of India's Liberalised Remittance Scheme (LRS).**
  - To get over this, businesspersons have turned to NRI , and under **Foreign Exchange Management Act, 1999**, NRIs can remit USD 1 million a year in addition to their current annual income, outside India.
    - Further, the tax rates in overseas jurisdictions are much lower than the 30% personal Income-Tax rate in India

- **Grey Areas of Indian Taxation:**

- There are certain **grey areas of taxation where the Income-Tax Department is in contest with offshore trusts.**

- After the **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**, came into existence, resident Indians have to report their foreign financial interests and assets.

**NRIs** are not required to do so.

- The I-T Department may consider an offshore trust to be a resident of India for taxation purposes if the trustee is an Indian resident.

- In cases where the trustee is an offshore entity or an NRI, if the tax department **establishes the trustee is taking instructions from a resident Indian, then too the trust may be considered a resident of India** for taxation purposes.

- **Government's Initiatives:**

- International Cooperation:**

- **Double Taxation Avoidance Agreements (DTAAs):**

- India is proactively engaging with foreign governments with a view to facilitate and enhance the exchange of information under **Double Taxation Avoidance Agreements (DTAAs)/Tax Information Exchange Agreements (TIEAs)/Multilateral Conventions.**

- **Automatic Exchange of Information:**

- India has been a leading force in the efforts to forge a **multilateral regime for proactive sharing of financial information** known as Automatic Exchange of Information which will greatly assist the global efforts to combat tax evasion.

- **Foreign Account Tax Compliance Act of USA:**

- India has entered into an information sharing agreement with the USA under the act.

**Source: IE**