



# Pandora Papers Leak

## Why in News

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

### ▪ 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:**

##### ◦ **Legislative Action:**

- [The Fugitive Economic Offenders Act, 2018](#)
- [The Central Goods and Services Tax Act, 2017](#)

- [The Benami Transactions \(Prohibition\) Amendment Act, 2016](#)
- [The Black Money \(Undisclosed Foreign Income and Assets\) and Imposition of Tax Act, 2015](#)
- [Prevention of Money Laundering Act, 2002.](#)
- **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](#)

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