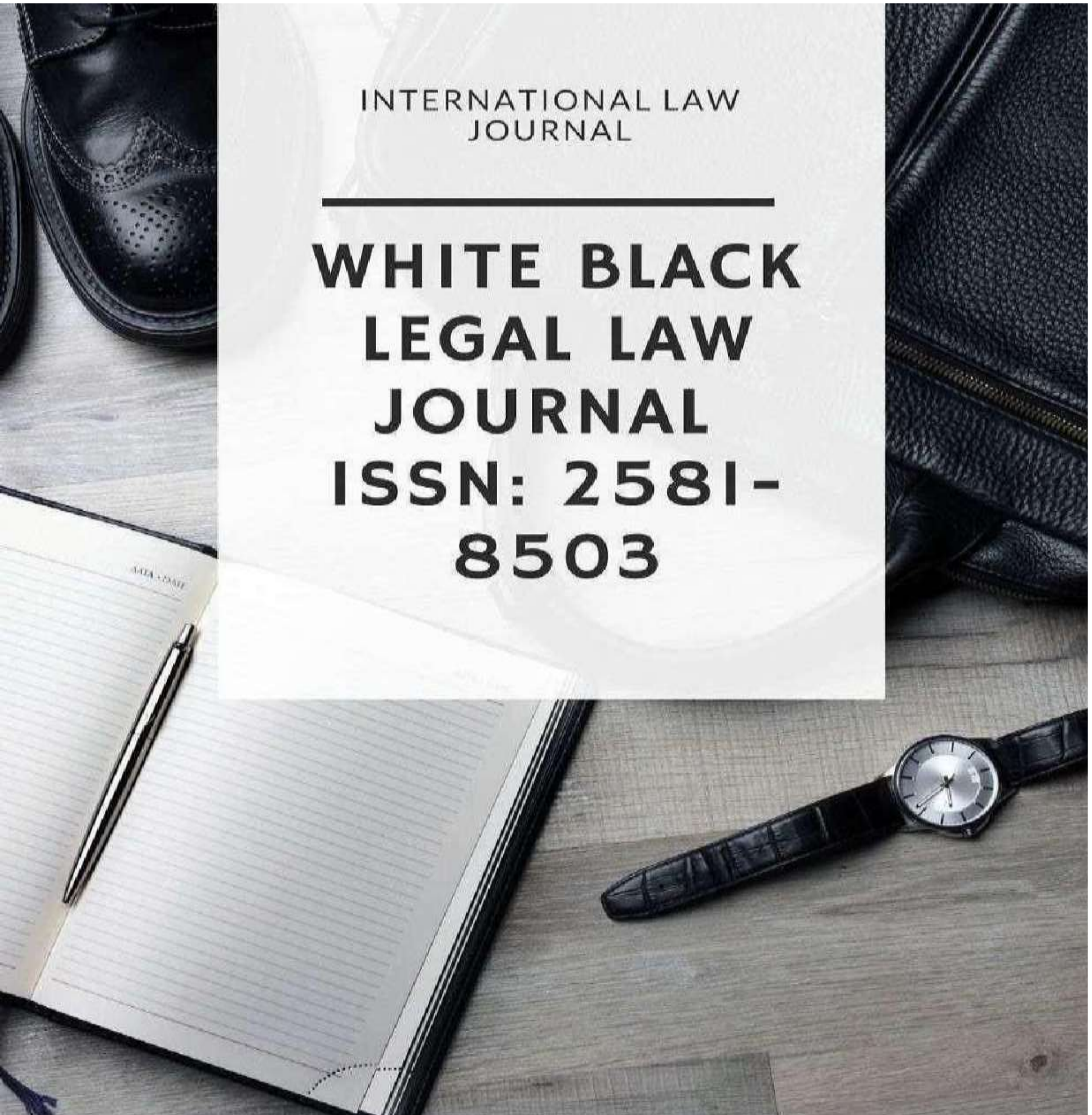

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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REGULATORY REGIME ON GOLD SMUGGLING IN INDIA

AUTHORED BY - MOHIT KALRA

DECLARATION

I, MOHIT KALRA, a student of LL.M. of IILM University, Greater Noida, with enrolment number 2420270055, do hereby declare that this dissertation paper is an original work of mine and is result of my own intellectual efforts.

I have quoted titles of all original sources i.e. original documents and name of the authors whose work has helped me in writing this dissertation. They have been acknowledged at appropriate places. I have not infringed copyright of any author.

Date : 01.05.2025 **MOHIT KALRA**

Place : IILM University, Greater Noida **2420270055**

CERTIFICATE

This is to certify that this Dissertation entitled "Regulatory Regime on Gold Smuggling in India" submitted by Mr. MOHIT KALRA for the award of the degree of Masters of Laws, is the record of bonafide research carried out by him under my guidance and supervision. This dissertation has not been submitted elsewhere for the award of any other degree, diploma, scholarship, fellowship or other titles in this or any other University or Institution of higher learning.

The dissertation is worthy of consideration for the award of LL.M. Degree of IILM University, Greater Noida.

Mr. MOHIT KALRA, has worked under my guidance and supervision to fulfill all requirements for the submission of this dissertation.

The conduct of research scholar remained excellent during the period of research.

Date: 01/05/2025 (Dr.) Swati Bajaj Seth
Place: Uttar Pradesh Associate Professor
IILM University, Greater Noida.

ACKNOWLEDGEMENT

At this point of time of giving finishing touch on my dissertation, let me be honest to state that it has been a stressful period of about three months of intense learning, not only in the educational arena, but also on a personal level. Writing this dissertation has had a big impact on me. So now is the time to remember people who have supported and helped me so much through this stressful period of learning.

First of all, I would like to thank my mentor and my fellow classmates who actually supported me to spare sufficient time for study from very busy schedule of professional life.

On study front, I would like to extend many thanks to the great personality without the support and guidance of whom it would not have been possible for me to conduct research for this dissertation. Yes, she is Dr. Swati Bajaj Seth, Associate Professor, my mentor at IILM University, Greater Noida who encouraged me to take up research on this topic. I am grateful to her for her valuable guidance, academic inputs, directions, suggestions, generosity and moral support in every aspect of my research work throughout the period of course without which this work could not have been completed. I hereby express my heartfelt gratitude to my mentor Dr. Swati Bajaj.

At the end, I heartily thank all my batch mates of LL.M. 2024-2025 Batch for their support and encouragement throughout the period of this work

Date : 01/05/2025 **MOHIT KALRA**

Place : IILM University, Greater Noida **2420270055**

ABSTRACT

Gold has emotional, cultural and financial value. There is huge demand worldwide because of its use in jewelry, technology and by central banks and investors, mean different sectors of the gold market rise to prominence at different points in the global economic cycle. People buy gold for different reasons, often influenced by a range of national socio-cultural factors, local market conditions and wider macro-economic drivers.

In ancient times, wealth was defined strictly by the amount of gold a person had. Gold was considered as barometer of an economy. In modern times too, under 'Gold Standard' system, the countries tie the value of their currency to gold. The strength of economy of any

country is measured in terms of the gold as gold is universally accepted. Gold is the deciding factor of economic status in many cultures.

In India too, for ages, Indians are fond of gold because of its beauty, purity and medicinal value. Gold can be called a hedge against inflation or a reservoir for future use or substitute for currency as a means of exchange. Gold is regarded as a store of financial value. Gold is the second largest traded commodity of India only after the mineral fuels which signifies that how important is gold for Indians.

On the one hand, huge profit in gold trade caused by the significant demand of gold in Indian market attracts may people into 'Gold Smuggling' to make fast bucks out of illegal gold trading, while on the other hand, considering gold as barometer of the country's economy and also as a big source of government revenue, the Indian Government attempts to regulate gold market by enacting various laws, rules and regulations including EXIM and taxation policy.

In this study, researcher makes an attempt to assess the influence of regulatory regime in combating 'gold smuggling' by analysing demand and supply of gold in India, Taxation Policy on Gold trade, various enactments- Gold Control Acts, Rules and Regulations for curbing 'Gold Smuggling' and impacts thereof.

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INTRODUCTION & SYNOPSIS

RESEARCH PROBLEM :

People across the globe, being influenced by a range of national socio-cultural factors, local market conditions and wider macro-economic drivers, buy gold for different reasons i.e. emotional, cultural and financial value reasons. There is huge demand worldwide because of its use in jewellery, technology and by central banks and investors, mean different sectors of the gold market rise to prominence at different points in the global economic cycle.

In China, gold has got a sort of cultural value where gold is usually gifted to family members like necklaces or bracelets on several auspicious occasions and Chinese New Year. Whereas there is huge demand of designer gold jewellery at times of weddings in the US market. In Turkey, merchants pioneered the use of gold coins in ancient Lydia, and today gold plays an important and innovative role in Turkey's economy.

In India, Gold has a central role in the country's culture, considered a store of value, a status symbol and a fundamental part of many rituals. Gold is the second largest traded commodity of India only after the mineral fuels which signifies that how important is gold for Indians.

In India too, on the one hand, huge profit in gold trade caused by the significant demand of gold in Indian market used to lure many people into 'Gold Smuggling' to make fast bucks out of illegal gold trading, while on the other hand, considering gold as barometer of the country's economy and also as a big source of government revenue, the Indian Government attempts to regulate gold market by enacting various laws, rules and regulations including Foreign Trade Policy and Taxation policy from time to time.

Many critics, including general public, opine that due to lack of efficient Regulatory Regime, especially Foreign Trade Policy, Taxation Policy and failure of various Intelligence Agencies of India, the "Gold Smuggling in India" could not be eradicated or reduced. This is the vital problem to be looked into hereinafter.

RESEARCH OBJECTIVES :

The author aims to ascertain the following:

1. To study and analyse the cause and magnitude of "Demand & Supply of Gold in India"
2. To study and analyse the cause and determinants of 'Smuggling of Gold in India"
3. To study magnitude of 'Smuggling of Gold in India"
4. To study and identify the significance of the Regulatory Regime – viz. FTP, Taxation Policy and various Acts, Rules & Regulations regulating Gold Trade in India.
5. To ascertain the impact of these laws and other enactments in combating the "Gold Smuggling in India"
6. To find out the probable solution to this grave problem of "Gold Smuggling in India"

RESEARCH QUESTIONS :

(i) What are the factors affecting Demand & Supply of Gold in India?

(ii) Is there any considerable gap between Demand & Supply of Gold in India?

(iii) What are the determinants of Smuggling of Gold in India?

(iv) What has been the magnitude of 'Smuggling of Gold in India" from time to time?

(v) What were the policies and enactments for Gold control in India?

(vi) What are the prevailing laws and rules & regulations for Gold control in India?

(vii) How far the Regulatory Regime of India has succeeded in combating 'Smuggling of Gold in India"?

RESEARCH HYPOTHESIS:

This study would aim to address the following Hypotheses

Hypothesis 1 : Taxation Policy of India" has succeeded in combating 'Gold Smuggling in India'

Hypotheses 2 : There is no need of 'Gold Control Policy" to combat "Gold Smuggling in India'

RESEARCH METHODOLOGY:

The research methodology adopted in preparing this dissertation is primarily doctrinal in nature based on empirical data available. The scope of the research is limited to primary and secondary sources. Certain books, journals, online article and publications have been referred to gain knowledge on the subject. Researcher has also included the views given by various eminent Personalities active in the field of Economics, International Trade of Gold, Indian Customs and Enforcement Agencies so as to provide a commentary on certain issues and get better knowledge and information.

LITERATURE REVIEW

The following sources have been used in preparation for the dissertation :

Give all references used inside

1) Gold Control Act, 1968

1A) COFEPOSA

2) Foreign Trade Policy post Independence

3) Customs Act, 1962

4) Customs Tariff Act, 1975

5) Baggage Rules, 2016

6) The Articles of Jewellery (Collection of Duty) Rules, 2016

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Destroying the Economy (CASCADE)
http://ficci.in/spdocument/20807/final-Smuggling-report.pdf

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13) https://www.statista.com/statistics/299638/gold-consumer-demand-by-top-consuming-country/

14) https://blogs.economictimes.indiatimes.com/et-commentary/46498/

15) https://www.americanbullion.com/wp-content/uploads/2014/10/three-gold-bars.jpg

16) Renowned judgements of Supreme Court / High Courts on the issue of 'Smuggling '

1. Gold: Importance, Demand & Supply

Demand of Gold in Indian Culture

Gold has a deep rooted significance in Indian history, attracting people from worldwide with its beauty and charm. We have read in history that many kingdoms were plundered just for the sake of gold they possessed. India was once called *"Sone ki Chidiya"* ['land of the golden bird']. Invaders right from Alexander to Mahmud of Ghazni and Nadir Shah came with the intent of looting this country. They were flabbergasted when they saw the magnificence of its kingdoms and its richness.

In ancient times, wealth was defined strictly by the amount of gold a person had. Gold was considered as barometer of an economy. In modern times too, under 'Gold Standard' system, the countries tie the value of their currency to gold. The strength of economy of any country is measured in terms of the gold as gold is universally accepted. Gold is the deciding factor of economic status in many cultures.

In modern times too, worldwide Gold has emotional, cultural and financial value. There is huge demand worldwide because of its use in jewellery, technology and by central banks and investors, mean different sectors of the gold market rise to prominence at different points in the global economic cycle. People buy gold for different reasons, often influenced by a range of national socio-cultural factors, local market conditions and wider macro-economic drivers.

In India too, for ages, Indians are fond of gold because of its beauty, purity and medicinal value. Gold can be called a hedge against inflation or a reservoir for future use or substitute for currency as a means of exchange. Gold is regarded as a store of financial value. Gold is the second largest imported commodity of India only after the mineral fuels which signifies that how important is gold for

Indians.[1]

India's Top 5 Commodity Imports

Commodity	Amount (Annually)
Crude Petroleum	$60.7 billion
Gold	$22.9 billion
Diamonds	$19 billion
Palm Oil	$5.6 billion
Copper	$2.46 billion

India has had a long-standing love affair with gold. At Indian weddings, some of the brides get so much gold jewellery that it weighs them down.[2]

Due to Indian Culture, there is huge demand of gold in India for the following reasons:

- **Religious Connotations** – Gold is an integral part of religious ceremonies in India, regardless of religion. Be it Hinduism, Sikhism, Jainism or Christianity, gold is a prominent asset across all major religions in the country. It is common for people to purchase gold at different religious gatherings and for different occasions. *According to the World Gold Council, upward 50% of Indian demand of gold is destined for weddings. Gold is ingrained in the culture and a part of their belief system. Not only is it integral to weddings, gifts of gold are common for anniversaries, birthdays and religious festivals. Gold jewellery is not regarded solely as adornment. It is a store of wealth. At one time it was widely accepted that women could not own anything except for their gold jewellery. That custom still prevails outside the major cities.*[3]
- **Family heirloom** – Gold is part of every Indian household and is considered a family heirloom by most Indians. Gold jewellery and ornaments are passed on from generation to generation, in a bid to keep family legacy alive. Gold is an extremely sentimental part of certain traditions and continues to remain a cherished heirloom.
- **Status Symbol** – There is no bigger status symbol than gold in India, and Indians are not shy to flaunt it. In a social setting with billions of people, gold is one element which can help people stand out, literally shine in the crowd. Gold has been a status symbol in India since ages, right

[1] *Commodity.com at https://commodity.com/country-profiles/india/*
[2] *"A Love Affair: India and Gold" by David Chapman*
[3] *"A Love Affair: India and Gold" by David Chapman*

from the time of kings and queens to the British and independent India has imbibed this into its blood.

- **Investment** – Gold has been considered the safest investment, a sentiment which Indians live by. It is this property of gold as a protector against bad times which have pushed Indians to buy it as investments.
- **Symbol of prosperity -** Gold is not only revered in this nation because of its religious sentiments. It is considered as the primary source of savings because of its economic value. From the rich to the terribly poor, in every class of the Indian society, gold holds immense value. Till currency came into being, gold was the most practical form of savings.

Importance of Gold :

Gold has been deemed precious and auspicious through history for more reasons than one. Gold is a unique asset based on a few basic characteristics. First, it is primarily a monetary asset, and Secondary, it is partly a commodity. As much as two thirds of gold's total accumulated holdings relate to "store of value" considerations. Holdings in this category include central bank reserves, private investments and jewellery bought primarily in developing countries as a vehicle for savings. Thus, gold is primarily a monetary asset. Less than one third of gold's total accumulated holdings can be considered a commodity, the jewellery bought in Western markets for adornment and gold used in industry. The distinction between gold and commodities is important. Gold has maintained its value over the long run, while commodities have declined. It is an internationally recognised asset that is not dependent upon any government's promise to pay, not linked to the performance of any company, industry or government. Gold is considered very special because Gold is the only universal asset with no geographic or socio-economic boundaries.

Timeless and Very Timely Investment

Gold was considered supreme for its rarity, beauty and unique characteristic as a store of value. Countries may rise and fall, currencies come and go, but gold endures. In today's world of uncertainty, people including financial professionals and sophisticated investors worldwide are attracted to gold, because it is an important and secure asset that can be tapped at any time.

An Effective Diversifier

Diversification helps in protecting the portfolio against fluctuations in the value of any one asset class. Hence gold is an ideal diversifier.

An Ideal Gift

In many cultures, gold serves as a family treasure or wealth transfer vehicle that is passed on from generation to generation. Gold coins and ornaments because of their intrinsic value are excellent gifts on many occasions. Moreover, it is available in a wide range of sizes and denominations, making them buyer-friendly and all buyers need not be wealthy to make a gift of gold.

Highly Liquid of the following reasons.

- **Universal Asset** Unlike many other investments including stocks of the world's corporations, gold can be readily bought, sold or exchanged globally on any market day. Holding a portion of portfolio in gold will be highly valuable in moments of emergency when cash is essential.
- **Ease of Carrying** In times of emergency or the outbreak of a war, gold succeeds currency in terms of ease of mobility. Conversions of other assets will really be difficult at such times.

Investment Vehicle

In India, gold is valued as a savings and investment vehicle and is the second preferred investment next to bank deposits. India is the world's largest consumer of gold in jewellery, much of which is purchased as investment.

Suitable form of Investment for All

Gold can be bought in desirable quantities and denominations according to the affordability of the buyer. So people of any economic class can purchase it, according to their convenience. Moreover it can be bought at any time of their choice.

Social Pride

In India, the possession of gold is a status symbol among all cadres and gives the possessor social and economic security.

Gold Consumption in India

India is the largest consumer of Gold stands 2nd in consumption next to China.[4] Around 52% of the gold in the world market is used for Jewellery (Out of which 78% is used for making jewels in India) followed by 18% as Individual holdings such as ETF's (Exchange Traded Funds) and Unaccounted. Another 18% held as reserves by the Federal/Central Bank and remaining 12% is used for Industrial Purpose such as components in electronic devices like cell phones, televisions and GPS units. Gold stands at 12% of our total imports next to Crude Oil and Capital Goods from the largest producers of Gold in this world. They are USA, China, Australia, Russia and South Africa.[5]

To pay in US dollars we are forced to sell our INR at cheaper rate to the buyer which dents our

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[4] *Statista 2018 https://www.statista.com/statistics/299638/gold-consumer-demand-by-top-consuming*

[5] *EPRA International Journal of Research and Development (IJRD) |ISSN:2455-7838 (Online) "A Case Analysis on Demand and Supply of Gold in India" by Dr. S. Periyasamy*

currency value negatively leads to price rise especially in Fuels.

Global consumer demand for Gold by top 15 countries in 2015 (in metric tons)*[6]

	Demand in metric tons
China	984.5
India	848.9
United States	192.8
Germany	123.8
Thailand	90.2
Saudi Arabia	84.5
Tukey	72.1
Iran	70.9
Vietnam	63.4
Indonesia	59
United Arab Emirates	58.4
Switzerland	50.4
Russia	45.9

LAW OF DEMAND

The Law of Demand states that the Consumption of the commodity will decrease when the price increases and when the price decreases the demand for the commodity will increase, whereas all the other factors remain constant such as Income of the consumer, Technology, Trend, Manufacturing and Government restrictions in usage.

Table : Demand of Gold Vs Price of Gold[7]

Year	Demand for Gold (Tons)	Price Rate (10 gms)
2011	990	25000
2012	870	32000
2013	980	29600
2014	800	29190
2015	1000	29633

The Law of Demand table shows above that there is a 20% increase in demand during the period 2014-15 though the average price per 10 grams of gold surge marginally and vice versa during 2013-14. However, the demand for the quantity of gold came down to a considerable amount in the year 2011-12 and considerable increase in demand during the year 2012-13. The demand increase during the

[6] *Statista 2018 https://www.statista.com/statistics/299638/gold-consumer-demand-by-top-consuming-country/*

[7] World Gold Council forecast 2015 & www.smaulgld.com

year 2012-13 can be attributed to price decrease which accepts the Law of Demand theory and the rest of the periods does not follow the Law of Demand.

The major policy change in the year 2012, the revision of Gold Customs Duty duly notified in "Notification No. 12/2012-Cus"[8] by increasing rates up to 36.05% for the import of Gold more than 1 Kg of its value. This curbed imports and paved way to increase in demand for gold in Indian domestic market.

The pattern of the consumption of Gold, changes in regulations, availability of gold reserve shows that the Law of Demand not being followed. The pricing and demand shows that the people are having the desire and ability to purchase more and more Gold even though the prices increases year to year.

DEMAND FUNCTION

As per the definition, it is "The representation of the factors which determines the quantity demanded of a commodity with respect to its price and other factors" widely called as Demand Function.

In this case, the demand for Gold is not dependent only on price, but also other factors influence the demand. The Idle Gold will be of no use other than cost involved in preserving the same in lockers. In spite of higher costs of maintenance such as re-making charges, wastages and locker charges.

The outcome of the Demand Function is that the Demand increases when the Price Decreases whereas in Indian context, the Demand and Price increases simultaneously.

Elasticity of Demand

As per survey conducted by FICCI and World Gold Council, the appetite for Gold is little affected by rising prices. Among respondents, nearly 20 per cent said they would buy more gold if prices rose and 34 per cent said they would do nothing. Only 14 per cent said they would stop buying gold if prices increased, while just 6 per cent said they would sell (Figure 1.6). [9]

[8] The principal notification No. 12/2012-Customs, dated the 17th March, 2012

[9] *FICCI – World Gold Council Report*

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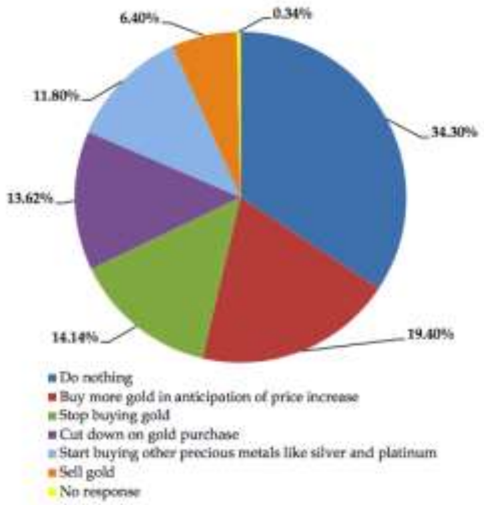
Figure 1.6: Actions Taken When Price of Gold Increases



Source: FICCI Gold Survey

Market trends in gold prices

The gold rate in the market depends on the demand and availability of the metal. The gold price has become unpredictable but those in commodities market seem to have a better grip on this. Due to its appeal, gold has been historically priced above other commodities most of the time.

Table I shows the gold price history of the last 50 years.[10] The price of 10 gm of gold in the year 1964 was Rs.63.25 whereas in the year 2012 was Rs.31,050. The gold price of 10 gm in December 2013 was Rs.29,600. Initially the increase in gold price was less from year to year but there is a drastic increase in the recent years.

In the past decade, the increase in gold prices has been notable. However, a sudden jump in the price from Rs.18,500 in the year 2010 to Rs.26,400 in the year 2011 is an astonishing increase.

[10] www.goldprice.in

Table I
Gold Price History for the Last 50 Years for 10 gm (24k)

Year	Price (₹)	Year	Price (₹)
1964	63.25	1989	3140
1965	71.75	1990	3200
1966	83.75	1991	3466
1967	102.50	1992	4334
1968	162.00	1993	4140
1969	176.00	1994	4598
1970	184.50	1995	4680
1971	193.00	1996	5160
1972	202.00	1997	4725
1973	278.50	1998	4045
1974	506	1999	4234
1975	540	2000	4400
1976	432	2001	4300
1977	486	2002	4990
1978	685	2003	5600
1979	937	2004	5850
1980	1330	2005	7000
1981	1800	2006	8400
1982	1645	2007	10,800
1983	1800	2008	12,500
1984	1970	2009	14,500
1985	2130	2010	18,500
1986	2140	2011	26,400
1987	2570	2012	31,050
1988	3130	2013	29,600

Source: www.goldprice.in

Factors influencing gold prices

Gold has always been an object of desire. Individuals seek it out for personal wealth and security. The value of money appeals above all other appeals in our world.

The following are the factors which are influencing gold prices:

Demand of gold.

Indians treat gold as a token of good luck, prosperity and good fortune. No wedding, no festival is complete without gold and jewellery in India. Though there is a high price, still the demand has not come down. India accounts for nearly one-third of the total world demand for gold. Indian consumers' demand for gold is 37.6 per cent more than that of China.

Inflation.

The most popular reason to own gold is as a hedge against inflation. The foremost reason given for the rising price of gold is inflation that runs rampant amongst the world's currencies. While gold is not the cause of inflation, gold as a commodity responds to market fluctuations and interest rate changes.

Gold as an investment

Due to its consistently increasing value, gold is considered as a safe and secure investment. The rural population sees gold as the most liquid saving instrument that can be converted into cash in the shortest possible time.

Import duty

The fluctuations in rupee along with the increase in import duty and curbs on import of gold have made consumers postpone gold purchases. Gold prices tumbled from Rs. 32,500 per 10 gm in November 2012 to Rs. 29,600 in December. One of the ways in which the Indian government is fighting against rising imports of gold is through increase in its import duty. It has been done five times in the recent past—from one per cent in January 2012 to ten per cent in 2013. It also increased the import duty on gold jewellery to fifteen per cent from ten per cent in September 2013.

Behavioural reasons

Gold has been perceived as a safe haven, especially during periods of financial and economic stress. Stating that, a safe haven can broadly be defined as an asset that protects investors' wealth against financial tur- moil and holder can resell it without loss at any time.

There are also two behavioural reasons why one should consider buying gold.

(i) gold has been the tradition- al form of savings amongst Indian households for many years. So, people need not be as nervous about fluctuations in gold prices when stock or bond prices move. Buying gold gives a feeling of comfort! Psychologists call this the 'exposure effect.'

(ii) gold is a real asset. And real assets possess an important characteristic—we can touch and feel them. The touch-and-feel factor is one reason why many prefer to buy physical gold than financial gold.

Value of US dollars

Historically, gold has traded in opposition to the dollar. A stronger dollar makes dollar-backed commodities such as gold more expensive to buy in other currencies, which weakens demand. Since the dollar has become the global trading currency, the gold rate has always been in relation with the dollar.

Any fall in the value of a dollar will lead to the increase in gold prices. When the dollar is seen to be on the rise, investors move away from gold and invest in currency. This causes the price of gold to drop drastically. Hence the value of the US dollar in turn affects the fluctuating gold price in India.

Interest rates offered by banks

The banks often invest in gold to hedge against inflation. Their other policies on interest offered on savings will also affect the gold price. The higher interest rates offered on savings by banks will drive the customers to invest more in currency. If the interest rates on savings are low, customers invest in gold and the gold purchase increases.

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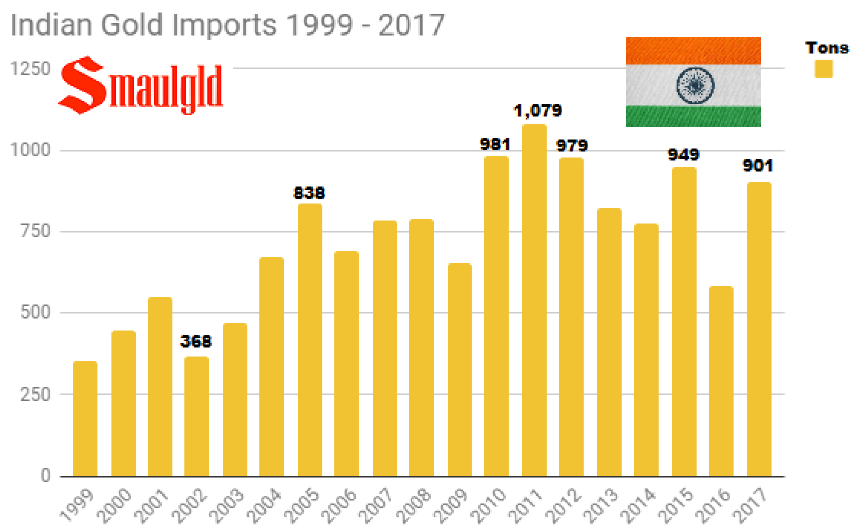
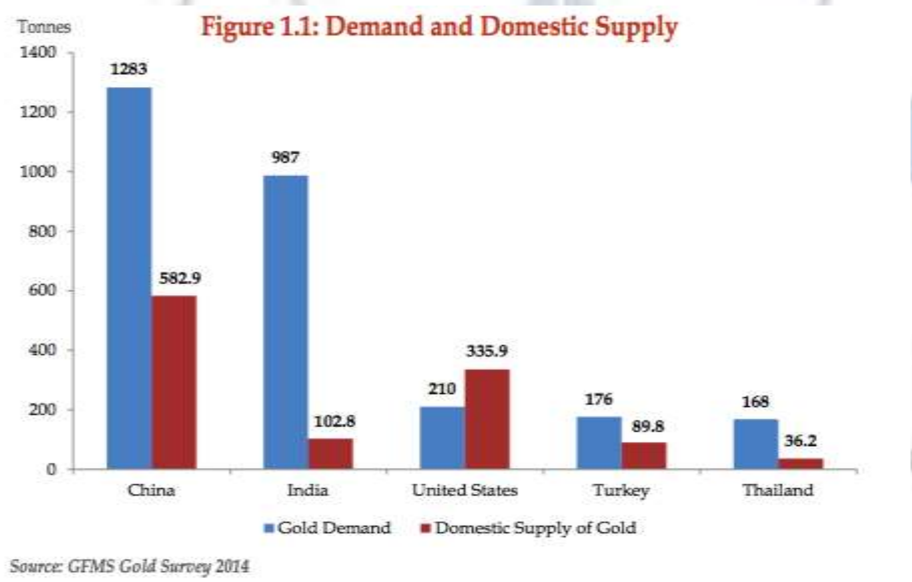
Import of Gold in India :[11]



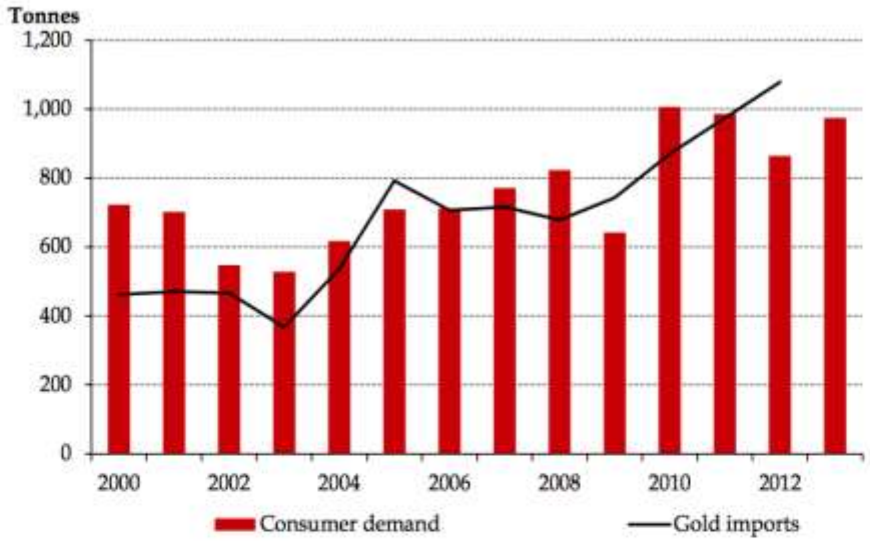
Supply and Demand Dynamics

A quick glance at the demand for gold in India, the supply of gold in India and amount of gold imported to India paints a stark picture.



[11] Smaulgld.com at https://smaulgld.com/indian-gold-and-silver-import-charts/

Figure 1.2: India's Dependence on Gold Imports



Source: GFMS, Thomson Reuters, Reserve Bank of India, World Gold Council

Looking at the top five countries (Figure 1.1)[12], India is the only country whose prime sources of gold supply (mine and old scrap) would meet barely 10 per cent of physical demand.
Figure 1.2 indicates the link between consumer demand for gold and gold imports in India.[13]

Gold Reserve worldwide

A gold reserve is the gold held by a national 'Central Bank' of a country, intended mainly as a guarantee to redeem promises to pay depositors, note holders (e.g. currency money), or trading peers, during the eras of the gold standard and also as a store of value or to support the value of the national currency.[14]

[12] *GFMS Gold Survey 2014*
[13] *GFMS, Thomson Reuters, RBI, World Gold Council*
[14] Gold Reserve : https://en.wikipedia.org/wiki/Gold_reserve

Top 20 according to World Gold Council's latest rankings (as of May 2018)[10][11][12][13]

Rank	Country/Organization	Gold holdings (in metric tons)	Gold's share of forex reserves
1	United States	8,133.5	75.0%
2	Germany	3,372.2	70.3%
3	International Monetary Fund	2,814.0	N/A
4	Italy	2,451.8	67.8%
5	France	2,436.0	63.4%
6	Russia	1,890.8	17.6%
7	China	1,842.6	2.4%
8	Switzerland	1,040.0	5.4%
9	Japan	765.2	2.6%
10	Netherlands	612.5	67.2%
11	Turkey[14]	595.5	23.0%
12	India	558.1	5.6%
13	European Central Bank	504.8	27.6%
14	Taiwan	423.6	3.8%
15	Portugal	382.5	60.4%
16	Saudi Arabia	322.9	2.7%
17	United Kingdom	310.3	8.4%
18	Kazakhstan	310.1	42.5%
19	Lebanon	286.8	21.6%
20	Spain	281.6	17.0%

In a nutshell

Gold has always fascinated the mankind's imagination and influenced their urge to possess the same. Gold occupies a pivotal role in the social and economic life of poor and rich alike. In India, besides the economic and strong social considerations, individuals are highly sentimental about the gold jewellery in their possession, as the gold ornaments are passed on from one generation to another. Acquisition of gold is considered auspicious and necessary for making family ornaments to get a sense of wellbeing in our country. Gold is increasingly considered as an investment that appreciates over years and provides a hedge against inflation. Gold is also considered as a medium that can be pledged easily during difficult times for securing financial accommodation.

India is known to be the largest importer of gold in the world. The imports of gold by India have been rising unabated in recent years notwithstanding the sustained increase in gold prices. Such large import of gold, when the gold prices are ruling high is one major source of bulging trade deficit. The deterioration in current account deficit (CAD) due to large gold imports has implications for financing the same, which would reduce the foreign exchange reserves and could become a drag on the external debt. In this context, a major concern emerged is the impact of huge gold imports on external stability.

2. Smuggling: Determinants, Extent and Effects

Globalisation has been an important engine of economic growth, significantly enhancing trade facilitation. On the other hand, it has also increased opportunities for illegal business operators to engage in illicit trade across borders, posing multi-dimensional challenges to national administrations.

Illicit trading activities such as smuggling are a socio-economic threat entrenched in the global trade system. Their syndicates are drawn by huge profits, while benefiting from weak legislation. Enforcement agencies face the formidable task of facilitating the flow of legal trade while dismantling organisations involved in smuggling operations. Smugglings dampens the economy in multidimensional ways. It destabilises the legal industry, restrains innovation and investments, reduces government revenues, fuels transnational organised crime and hampers the health and safety of consumers.

Smuggling of Goods: Definition

Smooth international trade happens between countries depending upon the demand, supply and financial factors affecting goods/products. Whenever normal official trade gets hindered due to economic or non-economic considerations, illicit trade comprises sizeable proportion of trade among such countries. This unofficial or illicit trade is referred to as smuggling.

Smuggling can be defined as "the clandestine import of goods from one jurisdiction to another."[15] The World Customs Organisation (WCO) glossary defines smuggling as, "Customs offence consisting in the movement of goods across a customs frontier in any clandestine manner, thereby evading customs control."[16]

Smuggling, therefore, is a criminal offense of bringing into or removing from a country those items that are prohibited or upon which customs or excise duties have not been paid.[17]

Sec.2(39) of the Customs Act, 1962 defines "smuggling" as "any act or omission which will render such goods liable for confiscation under Sections 111 or 113 of the said Act."[18] The word 'confiscation' implies appropriation consequential to seizure. Section 111 and 113 enumerate specific/ different categories of violations under which import or export goods are liable for confiscation.

In general, goods are considered to be smuggled into India and liable to be confiscated, if they attempt to enter into the country by route other than land routes notified under Section 7 of the Customs Act 1962. The imported goods are also liable to confiscation if there is an intention to evade Customs duty. Non-declaration (where no product is declared at port of entry) as well as not being in possession of any legal import documentation is considered to be smuggling. It also includes goods which are liable to confiscation if entered for importation that does not correspond in respect of value or in any material particular with the entry made or in the case of baggage with the declarations made.[19]

Smuggled goods may be confiscated even if its form has been changed. In addition to confiscation of goods, the conveyances, i.e., vessels, aircrafts or vehicles, or animals used in the smuggling activities or unloaded without permission of the proper officer are liable to confiscation.[20]

Smuggling by Products Types

In general, smuggling includes illegal trade of both legal and illegal goods.

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[15] *Deflem, M. & Henry-Turner, K. (2001). Smuggling, the Encyclopaedia of Criminology and Deviant Behaviour, Clifton D. Bryant, Editor-in-Chief., Crime and Juvenile Delinquency, 2, 473-475*

[16] *http://www.aseansec.org/economic/customs/glos_wco.htm*

[17] *MMerriman,D.(2002).Understand,MeasureandCombatTobaccoSmuggling.WorldBank,EconomicsofTobaccoToolkit,Tool7.*

[18] *Sec.2(39) of the Customs Act, 1962 of India*

[19] Sec.77 of the Customs Act, 1962 of India

[20] Sec. 115 of the Customs Act, 1962 of India

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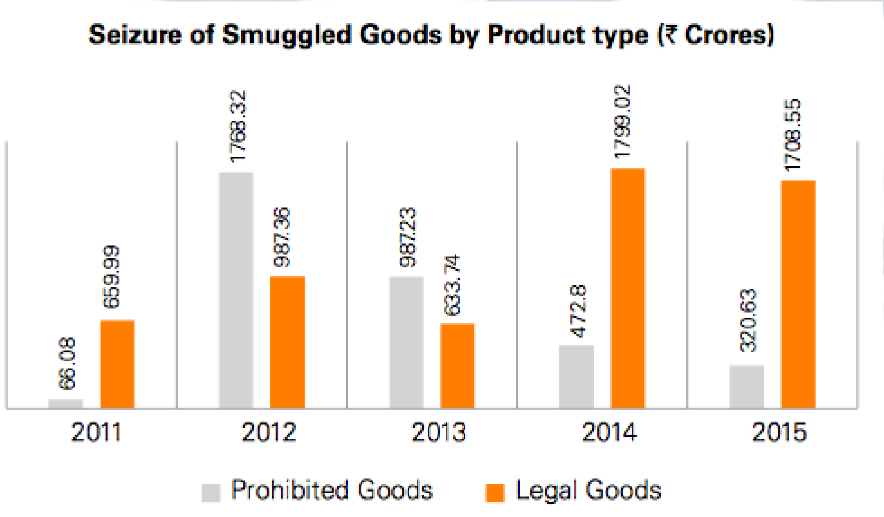
Smuggling of Prohibited Goods

"Prohibited goods" under the Customs Act 1962 means "*any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.*"

Customs rules and other applicable laws determine these products. Some examples of prohibited goods includes narcotics drugs, military weapons, fake currency etc. These products are not at all allowed to trade through legal channels and all smuggling is outright smuggling. This report will not focus on the smuggling of prohibited goods.



Source: Report No.5 of 2016 Union Government (Indirect Taxes Customs)

Smuggling of Legal Goods/Products

The smuggling of legal products is the import of those products for which the government accounts for custom duties and taxes at the time of the preparation of annual budgets. In fact, these products can be traded legally through payment of official duties and taxes. The main motive for undertaking smuggling in these products is evasion of customs and other applicable taxes.

The above table shows that smuggling in prohibited goods in 2014 and 2015 has come down, but it has increased substantially in legal goods. Machinery, agricultural goods, electronic items, automobiles and their parts are examples of legal goods. These goods/products do not need the permission of relevant governmental organizations for importing or exporting. These groups of goods/products are determined by the Ministry of Commerce in annual import and export regulations.

Some trade restrictions are imposed by the Government on import of these products to protect domestic industry.

Smuggling of Goods/ Products: Ways and Means

Transnational smuggling through illegal channels, involving outright smuggling of products or mis-declaring/under invoicing of values is a common and rapidly growing problem in India as in most other parts of the world.

Smuggling of goods / products (herein "goods/products" means only "legal" or non-prohibited goods/ products) may take place through both direct illegal ways of smuggling or legal channel of trade but adopting different ways and means to evade customs duties. Smuggling taking place by illegal channels is referred to as outright smuggling. Smuggling through legal channels of trade involves various means to evade customs duties and other taxes applicable on goods and products. This is often referred to as technical smuggling or even commercial fraud. However, these means also come under definition of smuggling as goods are liable for confiscation under section 111 of the Customs Act 1962.

Outright Smuggling

Directorate of Revenue Intelligence (DRI) defines outright smuggling as "the secret movement of goods across national borders to avoid customs duties or import or export restrictions." It takes place through unauthorized channels not covered under Customs Act 1962. Non-declaration (where no product is declared at port of entry) as well as not being in possession of any legal import documentation can also be considered as outright smuggling.

Financial incentives for outright smuggling are large enough for smugglers to avoid legal means and route. It typically occurs when either the customs duties are high enough to allow a smuggler to make a large profit on the clandestine goods or when there is a strong demand for goods, as in case of gold.

Outright smuggling may be distinguished in two ways:

- Goods that do not undergo customs clearance in either the exporting country or in India (importing country) (Type A)
- Goods that pass through customs clearance in the exporting country, but not in India (Type B)

Smugglers fully evade the customs duty and trade restriction in both A and B type of outright smuggling. In type A outright smuggling, smugglers need to undertake more risk and also high financial gains as they are able to fully evade inland taxes in exporting country (Value Added Taxes – VAT). In type B smuggling, risk for smugglers are lower in exporting as it is through legal channels and also they can avail of some export incentives such as duty drawback. Outright smuggling is difficult to detect and among main challenges for customs official and DRI.

Technical Smuggling

Within an institutional framework firms use legal trade to camouflage illegal trade. This illegal trade taking place along with legal trade is a kind of commercial fraud, where intention of importer is to reduce their custom duty burden by adopting different ways and means and can be referred as "technical smuggling". This type of smuggling takes place through only authorized channels under the Customs Act 1962.

Importers may adopt different means to evade customs duty on goods and products. Such goods are liable for confiscation, and come under the definition of smuggling of the Customs Act, 1962. Ways and means of technical smuggling may be classified into four categories based on seizure data of DRI:

Smuggling and Its Impact on the Country

Regardless of different approaches to definitions of this complex issue, the effects of smuggling are numerous and economically significant. Smuggling is a serious problem and its impact are far reaching, affecting various stakeholders including Government, domestic industries and citizens of the country. Most customs, border and law enforcement officials, policymakers, and academicians agree that illegal trans-border trading results in major financial and social costs to economy and society - globally.

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Direct Loss to Government Revenues

The smuggling of goods or products can be considered as one of tax violations that attack a country's tax system. It dampens legal imports and drastically decreases the volume of revenues collected from various duties and levies by state agencies. Customs duty forms a significant part of the Central Government revenues, which shows a decreasing trend over the past few years.

Customs Revenue and Its Contribution to Indian Economy

Year	GDP	Gross Tax Revenues	Gross Indirect Taxes	Customs Receipts	Customs Revenue as% of GDP	Customs Revenue as% of Gross tax	Customs as% of Indirect taxes
FY 2011-12	77,95,314	7,93,307	3,45,371	1,35,813	1.74	17	40
FY 2012-13	90,09,722	8,89,118	3,92,674	1,49,328	1.66	17	38
FY 2013-14	1,01,13,281	10,36,235	4,74,728	1,65,346	1.63	16	35
FY 2014-15	1,13,55,073	11,38,996	5,00,400	1,72,033	1.52	15	34
FY 2015-16	1,25,41,208	12,45,135	5,49,343	1,88,016	1.50	15	34

Source: Preface of Report No. 5 of Compliance Audit Customs Union Government Department of Revenue

Negative Effect on Economy

Monetary costs arise from smuggling due to evasion of taxes and tariffs. Smugglers, by evading legal duties and taxes/tariffs, are an extra burden for the government's budget. A developing country relies more on indirect taxes as compared on direct taxes and low indirect tax collections may have harmful consequences for the government's ability to provide public goods. The provision of public goods increases productivity of economy and thus not creating such public goods has a negative effect on productivity, development, and economic growth.

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Smuggling may have a negative effect on official indicators such as growth and income distribution. It involves bribery and other forms of corruption and tends to promote criminal behaviour in the economy. Smuggling may result in mass lay-offs in domestic companies who are unable to counter cheap imports, leading to surge in unemployment in country.

Determinants of Smuggling

There are various determinants for smuggling or illegal trade. These factors lead smugglers to adopt different ways and means of smuggling. As smuggling is secret, hidden and an inherent risky activity, there are additional factors which acts as determinants of smuggling. Following are key factors that determine extent of smuggling into a country:

High Tariff Rates

The concept of import duty is very wide and is applicable on almost every product/item imported to India barring goods such as food grains, fertilizer, lifesaving drugs, etc. These duties are levied by customs authorities to increase government revenues and also protect domestic industries from competition.

Basic duty is a type of tax imposed under the Customs Act, 1962, the rate of which varies for different items from 5% to 40%. Central Government has power to amend duty rate time to time under Finance Act. The duty may be fixed on ad–valorem or specific rate basis. In addition to customs duty, only other type of taxes imposed is ‘GST’ (Goods and Service

Tax" w. e. f. 1st July, 2017. Earlier, instead of GST, there were other types of taxes imposed on imported items that included : additional customs duty; special duty, anti-dumping duty.

Further, Government of India has formulated certain guidelines and policies for anti-dumping of imported goods and anti-dumping duty is imposed whenever required.

High import duty on goods/ products increase price differential and therefore provides financial incentives and motivation for engaging in smuggling activities. Higher tariffs are important push factors for smuggling.[21]

Restrictions and Prohibitions

Stringent trade restriction and administrative polices cause significant price imparity between domestic and international market of a good/product. Such mark-ups on restricted items provide noteworthy financial incentive for smuggling and tariff evasion.[22] Trade restrictions are important push factors for smuggling.[23]

In India, some goods are "prohibited goods" as defined under section 2(33) of the Customs Act, 1962 and are prohibited for imports. Apart from them, some specified goods/ products are restricted/ prohibited under other laws such as Foreign Trade (Development& Regulation) Act, Foreign Trade Policy, Environment Protection Act, Wild Life Act, Foreign Exchange Management Act, Trade Marks Act, Arms Act, Drugs and Cosmetics Act, etc. Prohibitions under those Acts will also be treated as Prohibitions under the penal provisions of the Customs Act, rendering such goods liable to confiscation for imports under section 111(d) of the Customs Act.

Drugs, Narcotics, fake currency and foreign currency are some of the restricted/prohibited items that are the most smuggled into India as these provide high financial gains to smugglers.

Rule of Law

Rule of law acts as a deterrent to smuggling. Higher expected costs, including fines and punishment costs, reduce the net gain of smuggling.[24] The expected costs of smuggling depends on the probability of being caught and punished by law enforcing authorities, i.e., on the

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[21] *Buehn, A. and Farzanegan M.R. "Smuggling around the world: evidence from a structural equation model", Applied Economics,2011, 3047-3064*

[22] *Pitt, M. (1981): Smuggling and price disparity, Journal of International Economics, 11(4), 447-458.*

[23] *Buehn, A. and Farzanegan M.R. (2011). Smuggling around the world: evidence from a structural equation model, Applied Economics,44(23), 3047-3064*

[24] *Martin, L. and Arvind Panagariya (1984).Smuggling, Trade and Price Disparity: A Crime Theoretic Approach, Journal of International Economics, 17(3/4), 201-17; Norton, D. (1988). On the Economic Theory of Smuggling, Economica, 55 (217), 107-118.*

efficiency of the monitoring system and efforts of the police. The expected costs of smuggling arise from the risk of being caught and punished by authorities and stricter enforcement increases the costs of smuggling as smuggling is counted as an illegal activity and the smuggler is always faced with the risk of detection, confiscation and punishment. Low risk of the law enforcement with profitability from tax evasion from smuggling enhances the motivation for illegal act of smuggling.

Intensifying law enforcement is deterrent to smuggling and enables authorities to reduce the extent of smuggling. The elasticity of tax evasion with respect to tariffs is a decreasing function of the quality of tariff enforcement.[25] Direct financial costs in terms of higher penalties has a significantly negative impact on the absolute amount of imports under-invoicing.

In India, smuggling is higher as compared to developed countries in large part due to poor enforcement and compliance. An important measure of lack of an effective enforcement mechanism is the number of policemen per lakh of population, which in India is 76, compared to 298 in Germany, 256 in the US and 307 in UK with median being 300.[26] Developed countries also have higher investment in technology and training that support surveillance, which enables proactive and effective enforcement actions possible. In the case of India, what makes situation further difficult is enforcement of rule of law through courts. The 2016 Doing Business report of the World Bank ranks India at the 130th position worldwide in terms of enforceability of contracts. Moreover, considering the technicalities of various provisions of law, the success of conviction is very low. Considering such a poor rate of conviction, a person has rather low risks and high gains from smuggling activities. This provides people greater incentives and motivation to undertake such acts.

Extent of Corruption

High level of institutional pervasiveness of corruption of the country reduces the probability of getting caught while extorting bribes. This in turn increases the marginal utility of the bribe to the customs official. It can be observed that as high level of corruption undermines the rule of law in a country, both are inversely related to each other.

India ranks 76 out of 168 countries in its latest Corruption Perception Index-2015, with its score remaining the same as in 2014 and increasing by just 2 points from 2013.[27] Indian's

[25] *Mishra, P., Subramanian, A., & Topalova, P. (2008). Policies, Enforcement, and Customs Evasion : Evidence from India. Journal of Public Economics, 92(10–11), 1907–1925*

[26] http://www.gutenberg.us/articles/list_of_countries_by_number_of_police_officers

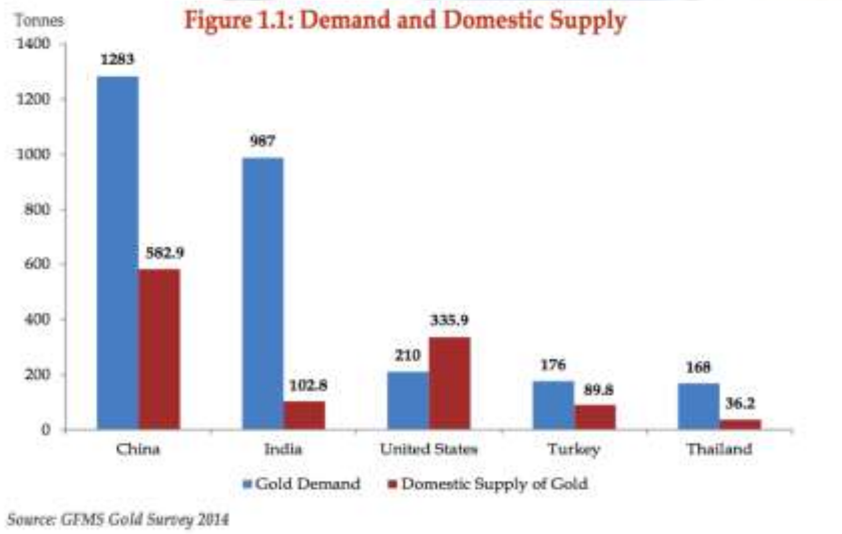
[27] *https://www.transparency.org/cpi2015/#results-table*

low ranking is indicative of the intensity of the problem and how it may be abetting the illicit trade or smuggling.

Demand -Supply Gap

Smuggling of goods depends upon the market size of the commodity or product. If the domestic market is large and is not fulfilled by the domestic supply of goods, imports step in to fill the vacuum for such goods. Greater reliance on imports, volume of international trade and value of the products give impetus to technical smuggling to evade taxes and duties.

Smuggling of gold in India is primarily driven by the demand and supply gap. India is the second largest consumer of gold in world.[28] The Indian gold jewellery industry is almost completely dependent on imported raw materials. The large domestic market provides smugglers enough arbitrage to fulfil needs of the market through smuggled goods.



Estimates of Smuggling of Key Goods/ Products

Due to its secretive nature and lack of verifiable data, it is never easy to calculate with absolute precision the size of smuggled goods. This section focuses on estimating the extent of smuggling of key goods into India. Selection of key goods in this study is done on the basis of seizure of goods. Based on the review of literature, a suitable methodology has been adopted to determine the extent of technical smuggling (smuggling through legitimate channels).

Identification of Key Smuggled Goods

[28] *Statista 2018 https://www.statista.com/statistics/299638/gold-consumer-demand-by-top-consuming-country/*

The basis of selection of key goods for analysis of smuggling in this report is the seizure data of smuggled goods into India. This includes seizure done by DRI as well as customs officials. However, it is reasonable to say that seizures are just a minuscule fraction of actual smuggling (both outright and technical smuggling) taking place.

Analysis of seizures of smuggled goods (excluding prohibited goods) during 2011-12 to 2015-16 reveals an irregular trend. There was a dip in seizure of smuggled goods during the period 2012-13 and 2013-14. Total seizures to value of imports ranges between 0.02% and 0.13% and remain stagnant at 0.05% in recent years.[29]

Smuggled Goods Seizure vs. Imports

Year	2011-12	2012-13	2013-14	2014-15	2015-16
Seizures of Smuggled goods (₹ Crores)	2,159.86	853.65	564.24	1,235.84	1,261.45
Value of Imports (₹ Crores)	16,83,467	23,45,463	26,69,162	27,15,434	27,37,087
Total Seizures to Value of Imports (%)	0.13%	0.04%	0.02%	0.05%	0.05%

Source: Report No.5 of 2016; Union Government (Indirect Taxes Customs)

Even so, seizure data provides a sound basis for selection of key product/ good for estimating the extent of smuggling in India. The table below shows seizure data of various goods and products smuggled into India. Top five goods/ products for analysing extent of smuggling :

Seizure of Smuggled Goods (₹ Crores)

Product/ Commodity	2013-14	2014-15	2015-16
Gold	99.35	692.35	1119.11
Machinery parts	69.5	563.18	447.1
Cigarettes	20.57	90.75	162.0
Fabric/silk yarn	49.89	24.03	41.78
Electronic items	71.66	37.85	17.98
Diamonds	9.46	6.62	14.81
Watches/parts	8.88	1.17	2.44
Computers/parts	18.6	0.46	1.78
Veh./Vessel/Aircrafts	306.08	472.89	62.66

Source: Report No.5 of 2016; Union Government (Indirect Taxes, Customs), CBEC, Lok Sabha Questions

[29] Report No.5 of 2016; Union Government (Indirect Taxes, Customs)

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Estimating Smuggling of Key Goods/ Products: Methodology[30]

The basis of selection of key goods for analysis of smuggling in this report is the seizure data of the DRI and customs officials. Based on review of literature and subject to availability of data, this study adopts the methodology that estimates "discrepancies between the trade figures of India with her trade partners" for ascertaining the extent of smuggling.

In order to estimate illicit trade and smuggling accurately using mirror statistics, imports are adjusted for CIF and other factors in the range 21% - 10% to arrive at FOB value of imports. This range of adjustment of imports is taken to determine the breadth of smuggling that takes place to evade customs duty in India. Selection of this range is based on International Monetary Fund and Central Board of Excise and Customs guidelines.

Smuggling of Product 'A' into India using this methodology is computed as: [2]

> Exports reported by World (partner countries) for Product A to India during period i minus Adjusted imports reported by India for Product A during this period i

Smuggling Estimate (%) of Imports may be depicted as:

> Exports reported by World (partner countries) for Product A to India during period i minus Adjusted imports reported by India for Product A during period
> ———
> Exports reported by World (partner countries) for Product A during period

Estimates of Smuggling in Five Key Goods/ Products

The extent of smuggling in India for five key goods/products that are most widely smuggled according to DRI estimates, given in the following table. The figures are averages for the period 2011-2015. [31]

[30] "Invisible Enemy – A Threat to our National Interests" by FICCI CASCADE

[31] "Invisible Enemy – A Threat to our National Interests" by FICCI CASCADE

Extent of Smuggling in India (in ₹ crores)	
Gold	(15,637) – (41,896)*
	20.9 – 48.0**
Machinery and Parts	26,561 – 41,586
Cigarettes#	7,561 – 8,946
Fabrics, Silk and Yarn	5,390 — 8,038
Electronic Items	3,353 – 17,516

** Negative Smuggling (arising out of over-invoicing of quantity of imports and under-declaration of value per tonne)*
*** Under valuation per tonne of gold*
 # Increase from 2013 to 2015

Estimate of Smuggling of Gold in India

India with 29% of global consumption is the largest consumer of gold in the world. Gold in India is considered as a symbol of prosperity and appeals to both the young and old across social strata. It has a unique emotional position in the minds of Indians and is also considered a source of social security for large sections.

Gold is in demand for both investment and consumption purposes. Gold contributes a large amount in total domestic jewellery consumption, mainly used in ceremonial and bridal wears, and accounts for about 80%-85% of total domestic consumption. Gold is also purchased as an investment option with nearly 76% people considering it as safe. For investment purposes Indians buy gold coins, bars and jewellery. According to a study during the period 2005-12 investment demand for gold bars and coins increased by a CAGR of 43% and that of jewellery by 22%. Consumption demand increased by a CAGR of 23% during the same period.[32]

Research Findings

Under the Harmonized Commodity Description and Coding System, gold is recorded under HS code 7108. The table below provides world exports of gold to India and adjusted imports of gold by India after adjusting for the CIF- FOB margin and other errors at 21% and 10%. As explained in the methodology, the mirror statistics provide estimates of technical smuggling

[32] The Gems & Jewellery Industry Contributing to "Make in India" (2015), TARI.

Technical Smuggling in Gold (US$ Mn/ Per Tonne)					
Year	World Reported Exports to India	Adjusted Imports: CIF-FOB margin @ 21%	Adjusted Imports: CIF-FOB margin @10%	Technical Smuggling: CIF - FOB margin @21%	Technical Smuggling: CIF - FOB margin @10%
	A	B	C	D=A-B	E=A-C
2011	14,326	42,412	48,317	-28,085	-33,991
2012	46,114	41,559	47,346	4,554	-1,232
2013	35,044	29,792	33,941	5,251	1,103
2014	26,804	24,521	27,936	2,283	-1,131
2015	25,522	27,650	31,500	-2,127	-5,977
Average	29,562	33,187	37,808	-3,625	-8,246

Source: Authors' Calculations, UN COMTRADE Database

Analysis of mirror statistics shows that value of gold exported by all partners is quite low as compared to imports reported by India. As a result, technical smuggling calculation shows negative values for all years except for the year 2013. At an average it ranges from (minus) US$ 3,625 Mn to (minus) US$ 8,246 Mn.

A further analysis of quantity of gold imports by India and quantity of gold exported by all countries to India reveals an interesting picture. India gold imports for period 2011 to 2015 is more than nearly 1,295 tonnes of what is exported by the rest of the world to India. Thus it may be surmised that such a huge quantity has entered Indian markets in the form of 'negative' technical smuggling of gold through over-invoicing the value of the quantity of gold that is imported. The average technical smuggling during 2011-2015 is nearly 259 tonnes with highest being 781.34 tonnes in 2011.

Imports and Smuggling of Gold			
Year	World Exports (Tonnes)	India Imports (Tonnes)	'Negative' Technical Smuggling (Tonnes)
2011	300.16	1081.50	781.34
2012	882.52	983.17	100.65
2013	750.16	836.18	86.01
2014	690.23	915.47	225.24
2015	943.47	1045.19	101.72
Average	713.31	972.30	258.99

Source: UN COMTRADE, CBEC

Further, investigation of mirror statistics of exports and imports of gold in terms of value per unit (US$ Mn per tonne) indicates undervaluation of gold. Analysis of value and quantity together shows that even though quantity of imports are much more than quantity of

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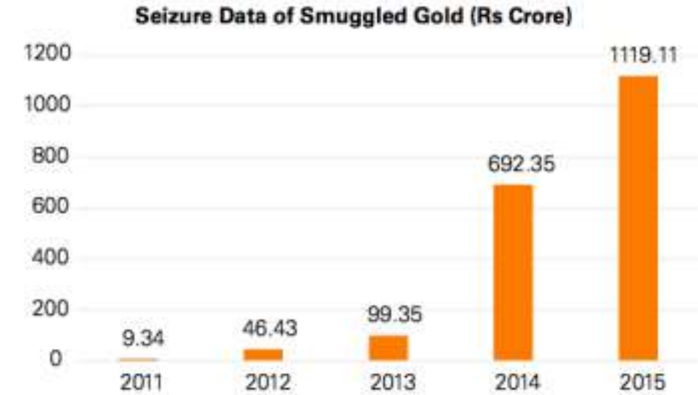
exports of gold to India, in value terms per tonne (in US$ Mn) it is much lower after adjusting for CIF-FOB margin at 21% and 10%. The average undervaluation during the period 2011 and 2015 is between 3.7 and 8.4 US$ Mn per tonne. The table below shows that undervaluation per tonne has been consistently increasing from 2011 till 2014 and showing sudden dip in 2015.

Technical Smuggling in Gold (US$ Mn/ Per Tonne)

Year	World Reported Exports to India	Adjusted Imports: CIF-FOB margin @ 21%	Adjusted Imports: CIF-FOB margin @10%	Technical Smuggling: CIF - FOB margin @21%	Technical Smuggling: CIF - FOB margin @10%
	A	B	C	D=A-B	E=A-C
2011	47.7	39.2	44.7	8.5	3.1
2012	52.3	42.3	48.2	10.0	4.1
2013	46.7	35.6	40.6	11.1	6.1
2014	38.8	26.8	30.5	12.0	8.3
2015	27.1	26.5	30.1	0.6	-3.1
Average	42.5	34.1	38.8	8.4	3.7

Source: Authors' Calculations, UN Comtrade

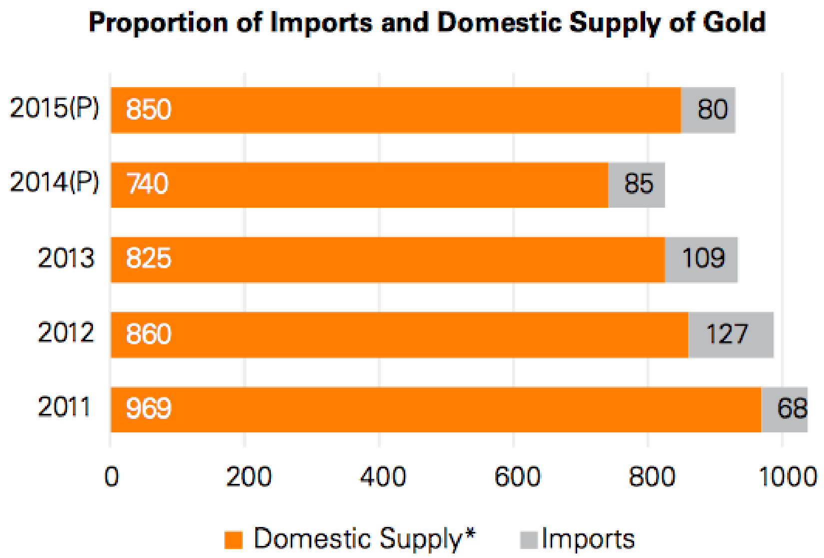


Source: CBEC Data

Seizure data in the above graph shows an exponentially rising trend with seizures of smuggled gold rising significantly in 2014 and 2015. Such sudden rise in seizures with imports remaining more or less stable reflects that outright smuggling in gold has started on a large scale after 2012. The spurt in outright smuggling of gold may be attributed to doubling of customs duty on import of gold products in 2012. Please refer to Annexure 3 for further details on notifications of customs duty on gold.

Smuggling of gold in India is primarily driven by the demand and supply gap. Indigenous availability of raw material plays a crucial role in the growth of any industry; the Indian gold jewellery industry is almost completely dependent on imported raw materials.

Almost 90% of requirement are fulfilled by imports. Interestingly while India has the largest aboveground gold stock it continues to depend heavily on imports of gold to meet consumer demand.[33] The chart below shows the trends in supply of gold in the country:



*Source: World Gold Council and ICRA estimates[61], * Includes recycled gold and other domestic sources*

Limited recycling and inefficient mining of gold are the main reasons for low domestic supply of gold. Less than 10% of total above ground stock in India is used for recycling and goes into domestic supply. Further, demand for gold in India is unique and to some extent inelastic to price. Part of the relative inelasticity of gold demand to price is explained by the religious and cultural significance of gold. An increasing trend in GDP/capita also reflects increase in domestic consumption of gold.[34]

Along with widening demand supply gap, the smuggling in gold is also stimulated due to price of the gold in the domestic market. Gold is a precious commodity, small in size and high in value per kg which makes it easy for smugglers to hide from enforcement agencies. In addition, there lies a significant price arbitrage between domestic and international market that provides strong financial incentives for smugglers to earn handsome profit.

The continued demand, relatively price inelasticity of gold demand, low domestic supply of gold, increasing GDP per capita provides greater consumption of gold to be met through gold imports. This provides unscrupulous persons opportunity to smuggle gold to take benefit of both price and demand- supply arbitrage while evading taxes of the legal channels.

[33] (http://icra.in/Files/ticker/SH-2014-H2-4-ICRA-Jewellery.pdf), * Includes recycled gold and other domestic sources

[34] The Gems & Jewellery Industry Contributing to “Make in India” (2015). ASSOCHAM and TARI.

Average per annum smuggling in Gold in terms of volume is (minus) 258.99 tonnes (that is, ‘negative’ smuggling: India shows higher quantity of imports than exports by rest of world). This translates into value of negative smuggling ranging from (minus) US$ 3625 million and (minus) US$ 8246 million, equivalent to (minus) Rs.15,637 crores and (minus) Rs.41,896 crores. This implies that gold is undervalued by around US$ 3.7 million to US$ 8.4 million, equivalent to Rs.20.9 crores to Rs.48 crores per tonne and is indicative of illicit money transfers from India.[35]

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Smuggling of gold in India is primarily driven by the demand and supply gap, where imports fulfil about 90% of the total requirements. The continued demand, relatively price inelasticity of gold demand, low domestic supply of gold, increasing GDP per capita provides unscrupulous persons opportunity to smuggle gold while evading taxes of the legal channels.

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Challenges in Dealing with Smuggling

[35] Using RBI exchange rates for respective years as on March 31 of each year

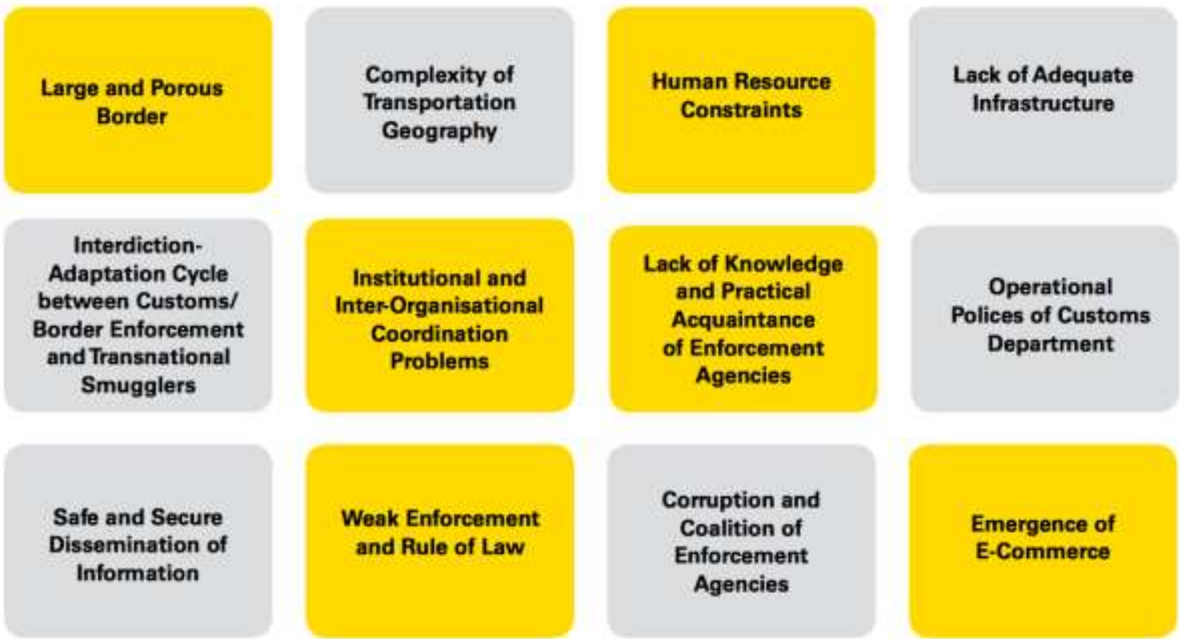
[36] “Invisible Enemy – A Threat to our National Interests” by FICCI CASCADE

[37] “Invisible Enemy – A Threat to our National Interests” by FICCI CASCADE

Smuggling is a widespread phenomenon, entrenched into the trade systems of most countries. National Customs and border enforcement agencies face the formidable task of facilitating the flows of licit/legal trade while concurrently disrupting illicit trade flows and dismantling organisations involved with smuggling operations. This parallel mandate can lead to operational inefficiencies within the Customs agencies leading to increased cost, delivery disruption, time delays, interruptions in the smooth flow of products and services, traffic and port congestion etc.

The rapidly changing global trading environment, marked by steadily growing volumes and complexity of supply chains, and heightened security concerns have had a large impact on the role and functions of Customs administrations everywhere. On the one hand, globalisation has been an engine of economic growth, enhancing the importance of the trade facilitation role of Customs. On the other, it continues to offer new opportunities for criminal organisations to engage in new types of frauds, posing multidimensional challenges to Customs administrations.

This section discusses the structural and operational challenges that the Customs authority in India face in controlling the spread of smuggling. These are:



Large and Porous Borders

India's geographical size is 3,287,590 square km with land boundary being 14,103 km long and coastline being around 7,000 km long.[38] Customs formations are deployed all along the border and extensive coastline.

India's coasts on the other hand are guarded by a well- organised coastal security plan involving the Navy, Coast Guard, Marine Police and Customs depending on the area covered. Customs occupy the innermost layer in this multi- layered approach to security. However, the vast coastline and cost in monitoring pose significant challenges in dealing with unscrupulous activities.

Complexity of Transportation Geography

Professional smugglers often have a good understanding of transport geography. They use this knowledge in making decisions regarding transportation routes, modes, use of specific transport infrastructure etc. The informal border crossings between two countries are often porous and traversed by foot, by horse or all-terrain vehicles. Moreover, resources at formal border checkpoints, such as drug-sniffer dogs are lacking, allowing smugglers to run rampant moving everything from illegal narcotics and illicit arms to oil and endangered wildlife.

Human Resource Constraints

Along with the sheer scale of managing the physical transport security of borders, Customs agencies are commonly faced with resource constraints. DRI faces severe resource crunch in most of its zones. As of March 2014, DRI had a working strength of 544 against a sanctioned strength of 740 staff members. There were accordingly 196 vacancies that constitutes 26.5% of total sanctioned staff. Moreover, 239 staff (43.2% of the total sanctioned staff) in DRI is on deputation which creates uncertainty that increases problems and does not allow staff to develop expertise of effectively dealing with smuggling. [39]

Lack of Adequate Infrastructure

The Compliance Audit Report of the Customs Department that infrastructure available with Customs' agencies at Land, Air and Sea Custom Stations are not always adequate and sufficient. Like Air and Sea Ports, an institutional framework viz. Land Ports Authorities of India (LPAI Act 2010) was also established and entrusted with the responsibility of undertaking the construction, management and maintenance of Integrated custom port (ICPs) for regulatory and support functions in an integrated manner in one complex with a single agency.

These Customs stations and ICPs have outstanding issues duly supported by DRI, Local Risk Management (LRM) inputs with security implications impacting border control functions of Customs e.g. availability of full body truck scanners, inadequate system of examination of passenger baggage and passengers at passenger terminal; mechanism to inspect the purity of gold/ Precious stones; absence

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[38] http://www.india.travelsphoto.com/india-facts.php

[39] DRI Staff Strength requirement report to CBEC- Human Resource Management, 2014

of facility of X ray/ non-intrusive investigation (NII) techniques, ICES coverage of Precious Cargo Customs Clearance (PCCC), Foreign Port Officer (FPO), hand baggage; access to Directorate of Valuation database, etc. This often led to smuggling of unauthorized goods and /or lack of facilitation.

Lack of Knowledge and Practical Acquaintance of Enforcement Agencies

Law enforcement agency as the largest mission-centered institution in the country should educate people and spread awareness of its work. In the strategic policies of this agency, it is important and essential to pay attention and determine the real value of intellectual capital as an incentive to compete with organizations and to improve and better control security and order in society.

In the backdrop of growing volumes and complexity of international trade, and the continuing expansion of ports, inland container depots, etc., the shortage of knowledge and skills leads to increasing thinning of its resources. This poses major challenge before the CBEC which clearly needs a strategic response.

Language barriers and cultural differences also hamper anti-smuggling activities by the Customs authorities.

Operational Polices of Customs Department

According to the Second TARC report, though the Customs authority in India are better equipped to develop comprehensive intelligence on activities along the coast than the other agencies involved, this is mainly attributable to their traditional informer base and network, which enables them to tap information more easily from the people and fisherman. In spite of this, there are several operational difficulties that the personnel on the ground have to face.

One of the major problems is that despite having acquired a modern fleet, much of it is non-operational because of the difficulties in manning the boats. Due to this, these valuable assets remain underutilised. Further, there is very little encouragement or incentive for the personnel to develop specialisation in the anti-smuggling areas since the transfer policies adopted by the department involves regular rotation of officers. Considering the often inhospitable locations of many postings, this often has a great impact on the effectiveness of customs formations as unsuitable or unwilling personnel get posted to such check posts.

Interdiction-Adaptation Cycle between Customs/Border Enforcement and Transnational Smugglers

Customs and border enforcement agencies in every country, through their activities, focus on interdicting and disrupting the flows of illicit trade by air, sea, and land. These initiatives utilise advanced technologies and control methods, customised for anti-smuggling efforts. All efforts are made to prohibit any kind of smuggling activity and protect the country borders. However, economists argue that it is these very interdiction initiatives by the Customs that trigger adaptation mechanisms among smugglers. For any activity by the Customs to control or prohibit illicit trade, smugglers with their wide networks and technological support, devise ways to adapt to such increased security at the borders.

The institutional friction generated between Customs/border enforcement agencies and transnational smugglers creates an interdiction-adaptation cycle where every action by the Customs is met with a counter action by the smugglers. This cycle can vary in time from days and months to years and decades, making it extremely difficult for the Customs agencies to effectively operate.

Institutional and Inter-Organisational Coordination Problems

Effective and efficient control of illicit trade needs proper coordination within and across the various departments and agencies involved in the process. In India, Central Board of Excise and Customs (CBEC) has several field formations to help it discharge its responsibilities of levying and collecting customs duties and preventing smuggling under the Customs Act, 1962. There are often coordination problems between the various departments and with other governmental agencies in relation to border procedures.

Safe and Secure Dissemination of Information

Usage and exchange of data or information often leads to challenges on its security and ethical use. The centralised data format, where-in data or information is aggregated in one place and used by many people, needs to have the correct balance between creating safeguards for organisational data and ease of use. The most rudimentary security technique to secure data is to apply access controls to the data where users are granted data access only on an as-needed basis.

Adopting and incorporating best practices around data security is imperative to maintain data integrity and privacy, prevent fraudulent use and ensure easy and efficient use of data and information.

Weak Enforcement and Rule of Law

Weak enforcement and rule of law is one of the impediments to effectively deal with the smuggling menace. Delay in investigation of smuggling cases by the enforcements agencies take out the bite of deterrence mechanism and makes the entire exercise worthless.

Corruption and Coalition of Enforcement Agencies

Corruption among some enforcement agents at the borders leads to fixed-income jobs being subordinated to smuggling and it is only to be expected for smuggling agents to bypass legal mechanisms of importation of goods by lateral investments. One of the main objectives of these hidden investments is to attract cooperation or ignorance of some factors by the enforcement agents that will lead to the financial corruption and the result is silence or inaction of such brokers.

Emergence of E-Commerce

The emergence of e-commerce is creating a global, virtual and borderless marketplace. This has a direct correlation with the growth in express cargo, as this, together with the postal channel, is the primary mode for delivery of goods, bought over the internet, to consumers overseas. In future, with increase in customer demand due to changing lifestyles and the lack of time, the trade volume through internet channels is only expected to increase. With the growth of e-commerce however, the global customs community is presented with the challenge of handling growing volumes of expedited clearances while maintaining sufficient control to prevent the abuse of this channel.

How to tackle the problem of Smuggling

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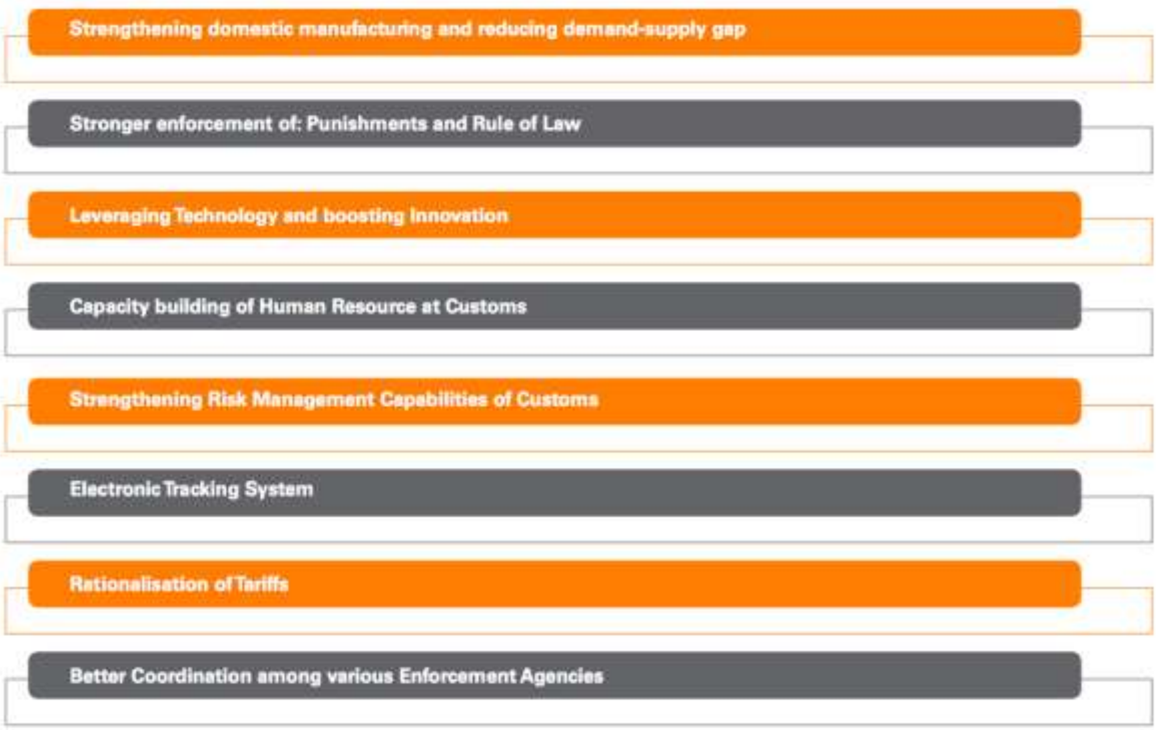
Smuggling severely harms the economy of a country in multidimensional ways. It undermines the local industry, suppresses innovation and investment, discourages legal imports, reduces the volume of revenues collected from duties and levies by the government, fuels transnational crimes and hampers the health of citizens. The ill effects of smuggling are felt widely across industries. In India, commodities where maximum smuggling takes place are drugs and narcotics, cigarettes, gold, silver, diamonds, machinery and parts thereof, arms and explosives, wristwatches, electronic goods and synthetic fibres.

The extent of smuggling and the challenges faced by the enforcement agencies to control it signal toward the criticality of the problem faced by the country.

Smuggling is an economic offence broadly driven by the following motives:

- to evade customs duty
- to gain undue export incentive by over-valuation of exports
- to launder funds ill-gotten through invoice manipulation
- to evade prohibition under the Customs law and any other law governing anti-smuggling activities in the country

Globalisation has made possible vast increase in trade, more mobility and fast means of communication—all of which have made smuggling easier. Coordinated efforts of the government and industry bodies are therefore needed to control the spread of smuggling. This section discusses the possible way forward for the country to tackle the problem of smuggling and the recommendations for consideration. These are:



Strengthening domestic manufacturing and reducing demand-supply gap

To control the spread of smuggling, the most important and effective measure is to increase the country's domestic production and reduce the demand and supply gap. With rising incomes and growth of the economy, the demand for goods and products has been on a constant rise across industries. The supply or production however has not been able to match the demand resulting in increased dependence on imports to fulfil this gap.

To tackle this problem, it is imperative that the manufacturing sector in India is strengthened, as also envisaged by the government's flagship programme to boost manufacturing in India – "Make in India.'' Realising the need, Government of India is increasing its focus on the electronics sector and aims to transform it from a predominantly consumption-driven market to one with manufacturing capability to cater to local and overseas demand while focusing on producing high-value add electronic products.

Gold Monetisation Scheme of the Finance Ministry of India is another effort by the government to help curb flooding of gold in the country through unofficial channels. Through this scheme, households and others are encouraged to part with idle gold lying with them in exchange for attractive interest rates. This gold will then be recycled in the economy thereby increasing the supply and reducing the demand-supply gap and ultimately to a large extent blocking the inlet of smuggled gold into the country.

Stronger punishments and respect for Rule of Law

Increasing the rule of law and reducing corruption are most necessary to control smuggling. In order to reduce the size of smuggling in the country it is necessary to strengthen the deterrence mechanism for committing the crime. The customs law mandates penalties to be levied on those violating the law; however, these penalties may not always be enough to discourage smugglers from committing these crimes.

Further, even in cases where the crimes have been tracked and criminals arrested, the slow rate of prosecution and judgements encourages the smugglers to continue their crimes. For curbing the widespread menace of smuggling and sending out a message to those involved in the crime, it is important to expedite judgements in such cases so that there is enough deterrence for the criminals to curb their activities for the fear of law.

Leveraging Technology and boosting Innovation

While it is impossible for the customs agency to physically monitor, control, and secure borders through manpower alone, the use of advanced technologies, such as unmanned aerial vehicles (UAV), embedded sensor and actuator solutions in transport assets, cargo shipment data mining with risk analytics, next generation surveillance cameras, x-ray technologies, and robotics, more so in the developed countries have aided Customs and border patrol agencies in deterring the flow of illicit trade and smuggling operations. India too could follow such example, thereby reducing the burden on the Customs agency of detection and seizure of illicit goods. By leveraging technology, Customs can alleviate some of the burdens associated with managing the physical scale of transport geography.

Capacity building of Human Resource at Customs

One of the major tasks that lie ahead of the Customs authority in India is to enhance the skills and capabilities of their staff as smuggling and illicit trade are growing and the means is becoming more and more sophisticated in nature. Along with new technology tools, it is important to enhance the analytical abilities of staff members to enable them to make extensive use of data analytics for identifying potential economic crimes. Capacities need to be built in ICT related areas such as computer forensics.

India could also follow the example of the European countries where electronic training is integrated with other forms of learning within Customs and Taxation training. The European Commission developed e-Learning courses on topics of common interest in collaboration with customs and taxation administrations and representatives of trade taxation.

For enforcement to be effective, a sharper focus on the quality of investigation is essential. Therefore, it is imperative that investigative skills of the personnel are honed. It goes without saying that cases of deliberate fraud and those that involve a difference of opinion or interpretation need to be dealt with separately. The latter would usually involve technical issues in which there could be more than one opinion and need to be handled differently. Normally, the dispute resolution mechanism should be adequate to take care of such cases. The former on the other hand need detailed painstaking investigation that uncovers evidence, sufficient to sustain the case in prosecution; for prosecution is the strongest deterrent to such malfeasance.

There is also need for specialised training in anti-smuggling operations, which is tailored to specific requirements, including the peculiarity of local conditions in the diverse environment in which these operations have to be carried out.

Strengthening Risk Management Capabilities of Customs Department

The Risk Management Division of the customs department needs to be substantially revamped and strengthened to enable it to support in developing programmes and policies to handle trade and at the same time improve risk assessment to levels of such accuracy where legitimate traders are not affected and illegitimate transactions are tracked down with ease.

The division must undertake constant evaluation of the performance of risk management systems (RMS) to ensure that there is sharpening of risk rules, targets or interventions inserted by the national and local risk managers to improve the quality of matches with suspect profiles.

Electronic Tracking System

The current system of reconciliation of cargo movement involves documents being forwarded from the station of import to the receiving station and returned with an endorsement for receipt of the cargo. This process is however dilatory, costly and unreliable since paper movement is involved. According to the Customs department, this process is also not trade facilitative since trade has to wait long for the cancellation and return of bonds/guarantees executed by them.

To tackle this, deployment of an electronic tracking system that uses the GPS, GPRS technology is a possible solution not only to enhance Customs control over the movement of such cargo but also to ease procedural/documentation requirements, eliminating heavy paperwork. Customs should leverage the adoption of the emerging "internet of things" by the logistics industry to real-time tracking of movement of goods across the supply chain, including to CFSs, ICDs, SEZs etc. and eliminate dilatory, costly and unreliable paper based processes.

Rationalisation of Tariffs

A major reason for flourishing of smuggling is the opportunity and arbitrage that it provides to smugglers to make money by evading taxes and duties. High taxes exacerbate the threat of smuggling especially in high value commodities such as gold and high in demand products such as cigarettes.

As the report findings also suggest, cigarettes are also smuggled mainly through outright channels where duties are completely evaded. Customs seizure data also indicates that there has been a consistent rise in the outright smuggling of cigarettes in India.

To curb the threat of outright smuggling, it is imperative that import duties are rationalized to such an extent that it is no longer profitable for smugglers to carry out illegal imports through underground channels and such imports are carried out legally and brought into the formal trade channels where tracking is easier.

Better Coordination among Smuggling Enforcement Agencies

Enhanced integration between the CBEC and CBDT would result in a more harmonious and convenient taxpayer experience. At the same time, greater sharing of information between them would reduce opportunities for fraud. However while the two Boards hold bilateral meetings to understand mutual requirements and availability of data, they have not yet moved towards life cycle management of data – creating 'one data and many users'.

In order to tackle the common menace of smuggling, greater capacity needs to be built in customs to counter trade based money laundering by greater use of analytics and strong co-ordination among the DRI, RMD, FIU and Directorate of Enforcement.

Gist :

Smuggling is all pervasive with industry, government and society directly bearing its brunt. The extent of smuggling in the country is a cause of great concern. The customs department is doing its bit to manage legal trade movement and the parallel illegal channel. It has had to move away from the "gatekeeper" approach and are now investing heavily in technology, simplifying processes and recognising information as the basic lever of control. However, to effectively tackle the growing menace of smuggling in India, a lot more needs to be done to make the compliance and processes more robust and detection of such crime easier. Naturally, concerted efforts of the government and industry bodies are needed to achieve this challenging and mammoth task.

2. Legal & Institutional Framework - for control of

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Smuggling

Smuggling takes place when unscrupulous elements try to evade the duties leviable and bypass various prohibitions/restrictions in relation to imports by attempting to bring the goods into the country from places other than the notified ports/airports/Land Customs Stations without reporting or presenting the goods to Customs.[40]

The legal framework governing the control of smuggling in India are based on two regulations, namely: the Customs Act, 1962 and the Smugglers and the Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. This section briefly discusses provisions of these two acts aimed at dealing with smuggling activities and smugglers.

Customs Act, 1962

The Customs Act, 1962 is the basic statute which governs and regulates the entry and exit of different categories of vessels, crafts, goods, passengers, etc. into or outside India. According to the Act, as stated earlier, Smuggling is defined as "as any act or omission which will render goods 'improper imports' and liable to confiscation."

Confiscation means seizure of private property by the Government without compensation to the owner, often as a consequence of conviction for crime, or because possession or use of the property was contrary to law. A customs officer can authorise seizure of goods if he has good reasons to believe that goods are liable for confiscation under section 110 of the Act, as in case of smuggled goods. The sensitive goods, like narcotics and arms which are prohibited under the Act are absolutely confiscated.

Coverage of Smuggling

The specific violations that come under definition of smuggling, under which the "improper imports" are liable for confiscation are enumerated under section 111 of the Customs act, 1962. The lists of activities considered as smuggling or "improper imports" have been given in section 111 of the Customs Act of 1962, (Explain here : the following goods brought into India from a place outside India are considered improperly imported goods and are liable to confiscation:)

Apart from section 111, smuggled goods can also be confiscated under the following provisions of the Customs Act 1962:

[40] Customs Manual, 2015, CBEC, GOI

Section 115- Conveyances (vessels, vehicles or aircraft)	• Conveyance used in smuggling actvities, or if goods are thrown overboard to evade seizure, or unloaded without permission of proper officer
Section 118 - Packages and their contents	• In case of goods imported in a package liable for confiscation, the package and its other contents are also liable for confiscation
Section 119 - Cover goods	• Goods used for concealing smuggled goods are also liable for confiscation
Section 120 -Smuggled goods mixed with other goods	• Smuggled goods can be confiscated even if they have changed their form or are in an inseparable mixture form with other goods
Section 121 - Sale proceeds of smuggled goods	• Sale-proceeds from smuggled goods are liable to confiscation

Source: Customs Act, 1962 with consequent amendments

Powers of the Customs Department

The Customs Act, 1962 confers sufficient authority to the Customs officers to act as quasi-judicial authorities and adjudge duty, fines, penalties etc. It empowers Customs officers to carry out searches, arrests and prosecution of persons involved in such offences related to smuggling and lays down the procedures for imposing the penal provisions before action is taken against offending goods, persons or conveyance (vessels, vehicles or aircraft) involved in the violations.

The officers of customs department has adjudication authority under section 122 of the act which is based on value of confiscated goods:

Adjudicating Officer	Value of goods liable for confiscation
Commissioner/Jt. Comm.	No limit
Assistant/Deputy Comm.	Not exceeding ₹ 5 lakh
Gazetted officer of lower ranks	Not exceeding ₹ 50,000

Source: Customs Act, 1962 with consequent amendments

Special provisions of Customs Act to effectively deal smuggling includes:[41]

Burden of proof

One of the significant changes in the Customs Act of 1962 is that of burden of proof. After 1973 amendment, the burden of proof in case of smuggling is on the person from whose possession the goods were seized or who claims to be the owner of the goods seized u/s 123. It applies to seizure of gold and manufactures thereof, watches and any other class of goods which the union government notifies.

‘Mens rea’

Mens rea is standard common law test of criminal liability expressed in the Latin phrase means “the act is not culpable unless the mind is guilty”. Customs department does not have to

[41] Customs Manual, 2014, CBEC, Department of Finance, GOI

prove "mens rea" for imposing penalty. The penalty depends on the gravity of the offence and is meant to act as a deterrent.

Civil and Criminal Liabilities/Punishments for Smuggling

The Customs Act of 1962 provides for civil and criminal punishments. The civil punishment involves confiscation of goods and imposition of penalty by the departmental authorities. In grave offence cases, the Customs Act of 1962 provides for prosecution with imprisonment up to a maximum of 7 years. This involves criminal proceedings in a court of law, after sanction from the competent Customs officer.

Penalties for Smuggling Activities

Penalty for improper import of goods liable for confiscation is Rs.5,000 or value of such goods/ duty payable, whichever is higher u/s 112 of the Customs Act, 1962.

Offence	Penalty
(i) Prohibited goods	Value of goods or ₹5,000, whichever is higher
(ii)Dutiable goods, other than prohibited goods	Not exceeding 10 percent of the duty sought to be evaded or ₹5,000 whichever is higher
(iii)When declared value is higher than value thereof	Difference between declared value and value thereof or ₹5,000, whichever is higher
(iv)Goods falling in both (i) and (iii)	Value of goods or the difference between declared value and value thereof or ₹5,000, whichever is highest
(v) Goods falling under both (ii) and (iii)	Duty sought to be evaded or difference between declared value and value thereof or ₹5,000, whichever is the highest

Source: Customs Act, 1962 with consequent amendments

Customs Acts 1962 allows imposition of penalties for smuggling related activities:

Short-levy or non-levy (Section 114A)

In cases of non-levy/short-levy of duty or interest or erroneous refunds by reason of collusion or any wilful mis-statement or suppression of facts, the concerned person is liable to pay the duty or interest (section 28 (8)) and also required a pay penalty equal to the duty or interest so determined. Further, if such amount, along with interest and penalty, is paid within 30 days, the penalty gets reduced to 15% of the duty or interest, amended in 2015 from 25%.

Use of false and incorrect material (Section 114AA)

If a person knowingly or intentionally uses false and incorrect material in the transaction of any illicit trade, he may be penalised upto five times the value of goods.

Person in charge of conveyance (Section 116)

If any goods loaded in a conveyance for import into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance are not un-loaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable for:

Offence	Penalty
(a) in case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act	not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported
(b) in the case of coastal goods	not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported

Source: Customs Act, 1962 with consequent amendments

Criminal Proceedings

The Customs Act of 1962 also provides for criminal prosecution in a court of law for serious offences to effectively tackle smuggling, apart from penal action by the department. Such serious offences include:

The grounds spelled out for arrest are: false declaration / false documents (section 132); obstructing officers of Customs (section 133); evasion of duty or prohibition (section 135).

All offences covered under section 104(6) were bailable till 2013. However, with the rising threat of smuggling in the country, a major amendment was made to this section in 2013, where certain offences described below were made non- bailable that are:

a) Evasion or attempted evasion of duty exceeding Rs.50 lakh;

b) Prohibited goods;

c) Import of any goods not declared under provisions of the Act, whose market price exceeds Rs.1 crore;

d) Fraudulently availing of or attempt to avail of drawback or any exemption from duty, if such drawback or exemption exceeds Rs.50 lakh.

The Commissioner will sanction prosecution only after being satisfied, based upon the results of investigations and evidence brought on record, that there are sufficient reasons justifying criminal prosecution. Prosecution is normally launched after completion of adjudication proceedings. But in certain offences relating to items like fake Indian currency notes, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may be launched immediately after the show cause notice.[42]

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

This law provides for the forfeiture of properties illegally acquired by smugglers and foreign exchange manipulators. Applicability of this regulation is covered under following laws and action for forfeiture of illegally acquired property can be taken against every person and its relative or associate.[43]

The illegally acquired property is forfeited to the union government by the 'Competent Authority' so appointed by the government under the law. The Competent Authority and the Appellate Tribunal for Forfeited Properties have the powers of a civil court in these matters and has powers to take possession of property on which fine is not paid within due time.

As in Customs Act of 1962, the burden of proof is on the person affected.

Penalties for Smuggling Related Activities

The Competent Authority, after hearing may pass such order, as it deems fit, either forfeiting properties to the union government free from all encumbrances or releasing some or all of them after

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[42] Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962- reg., Circular No. 27/2015-Customs, Oct. 2, 2015

[43] http://www.cadelhi.gov.in/content/page/forfitureunder.html

recording a finding in respect of each property.

If more than 50% of the source of funds invested in the purchase of property identified for forfeiture is explained satisfactorily, the Competent Authority shall give an option of paying in lieu of forfeiture and a fine equal to one and one fifth times the value of such part after affording him with an opportunity of being heard.

COFEPOSA 1974

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974

The Act, Conservation of Foreign Exchange and Prevention of Smuggling Activities, 1974, gives wide powers to the executive to detain individuals on the apprehension of their involvement in smuggling activities.

The Act is based on the concept of Preventive Detention, which apart from being a colonial legacy, is also given explicitly in our constitution as 'the necessary evil', and laws exist under Article 22 for the same for reasons related to security of the state and maintenance of public order.

Scope

As the statute goes, the COFEPOSA Act provides for detention in certain cases for-

- Conservation and augmentation of foreign exchange (with reference to Foreign Exchange Regulation Act, FERA, 1973)
- Prevention of smuggling activities and matters connected.
- Other Preventive detention Laws are as under:-
  - National Security Act (NSA), 1980
  - Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988
  - Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980

Constitutional Backing

- Entry No. 3 of List-III (Concurrent List) in Schedule 7 of the Constitution of India- Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community
- Article 22(4)(7) of the Constitution- no law providing for preventive detention shall authorize the detention of a person for a period of more than three months unless in the meantime the Advisory Board has reported that in their opinion there is sufficient cause for detention
- Article 22(5) of the Constitution provides for communicating the grounds of detention

The Act gives wide powers to the executive to detain a person on mere suspicion of smuggling. This Act has been criticized by various Human Right activists and organizations *for being draconian. The Act has given special protection by including the same in the 9th schedule to the Constitution of India.*

The Supreme Court upheld the validity of COFEPOSA, 1974 in **Attorney General of India Vs Amaratlal Prajivandas (AIR1994SC2179)** *by saving that the individual civil liberty will be curtailed by the authority in the interest of General Public and the Nation.*

COFEPOSA is not a punitive Act. It does not empower authority to punish a person without trial. It provides a preventive detention of person, before engaging in smuggling activities. A person can be detained under provisions of the Act, on the basis of suspicion that he will be engaged in smuggling activities but the detention must be followed both substantively and procedurally by detaining authorities.

UOI vs. Paul Manickam 2003 AIR SCW5423 it was held that in case of preventive detention, no defense is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But the same time a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed and a meticulous compliance with the procedural safeguard, however technical is mandatory.

PREVENTIVE DETENTION

Haradhan Saha vs. State of west Bengal (1975) 3 SCC 198*; it was held that the preventive detention is qualitatively different from punititive detention. The Preventive detention will be exercised in a precautionary measure with a reasonable anticipation that the detenu is going to indulge in any anti national or smuggling activities. It may or may not be related to any offence. An order of preventive detention may be made before or during the prosecution. An order of preventive detention may be made with or without persecution and in anticipation or after discharge or even acquittal*

DETENTION UNDER COFEPOSA, 1974

Section 3(1) Under provisions of the Act, a Government officer, not below rank of Joint Secretary in case of Central Government and Secretary in case of State Government , who is specifically authorized by Central or State Government for that purpose , is authorized to order detention of a person (including a foreigner) with a view to prevent him from acting in any manner prejudicial to conservation or augmentation of foreign exchange, or to prevent him from smuggling or abetting smuggling goods or harboring persons engaged in smuggling activities.

Section 3(2) provides that where order of detention is made by State Government Officers, it should be informed to the Central Government within a period of 10 days from the date of detention.

Article 22(5) of the Constitution of India provides that a person detained under any law for preventive detention, grounds of order must be communicated to him by the authority making the order.

Article 22(6) provides that the facts of detention need not be disclosed, if the detaining authority considered it is against the public interest.

Section 3(3) of COFEPOSA, 1974 provides that communication must be done within a period of 5 days and in exceptional circumstances , within a period of 15 days(after recoding the reasons of delay).The reasons should be recorded in writing, but it is not necessary to communicate the reasons of delay to the detenu.

Sophia Gulam Mohd. Vs. State of Maharashtra (1999 AIR SCW 2985) it was held that copies of all documents considered by detaining authority must be given to the detenue.

State of Tamil Nadu vs. Senthil Kumar (AIR 1999 SC 971); it was held that additional papers were given to the detenue in a causal manner, without covering note and without mentioning that these grounds will be placed before the Advisory Committee and the Government in confirmation of detention order is an infringement of provisions of Article 22(5) of the Constitution. It was held that the Courts adhere to strict compliance to procedural safeguards in every case of preventive detention. Article 22(5) of the Constitution gives right to the detenue to make a representation. Such representation can be made to Officer who made the order of detention (as may be authorized by the government for this purpose) as well as to Advisory Committee. The detaining authority as well as authority that have power to revoke detention order has to consider the representation.

Nutan J Patel vs. SV Prasad (1996) 2 SCC 315; it was held that the person has to be informed of his right to make representation to detaining officer, State or Central Government and Advisory Board.

TA Abdul Rahman vs. State of Kerala(1991) 70 SC 578; it has been held that delay in securing arrest after detention order and delay in disposal of representation against detention vitiates the detention order.

A Mohammed Farook vs. Joint Secretary (1999)(7) SCALE 274; it was held that subjective satisfaction of detaining authority gets vitiated if there is inordinate delay in executing detention order, without indicating steps taken by executing authority.

Section 4 of COFEPOSA, 1974; provides that the order of detention can be served on a person anywhere India in the manner for execution of warrants of arrest under Code of Criminal Procedure in case of a person who is absconding , the State or Central Government may apply to Magistrate of the First Class or Metropolitan Magistrate and he will issue orders in respect of person and his property according to the provisions of Code of Criminal Procedure.

Section 5 of COFEPOSA, 1974; provides that a person can be detained at any place and under any condition as to maintenance, interviews or communication with others, discipline and punishment for breach of discipline, as the Central Government or State government may specify. He can be moved from one place to other or from one State to other.

Section 5A of COFEPOSA, 1974; provides that the grounds are severable i.e. all grounds have to be treated as separate. Even if detention order on one ground is found to be invalid, detention cannot be set aside, if it can be sustained on remaining grounds. It is presumed that the officer making the order of detention is satisfied that detention is necessary to conserve foreign exchange or prevent smuggling and no proof regarding his satisfaction is necessary.

Article 22(4) of the Constitution; provides that a person can be detained as preventive measure. The detention can be further extended only if Advisory Board reports before three months that there is sufficient cause for detention. The Central Government will be representation before the Advisory Board within a period of 5 weeks from the date of detention.

Section 10 provides that the maximum period of detention can be one year from the date of detention. The government can revoke the detention order at any time even after recommendation of Advisory Board.

Section 12(3) of COFEPOSA, 1974; provides that a person detained can be released for a specified period by Central Government or State Government with or without conditions. A bond may be asked from the person being released. If released person does not return on specified date, he can be imprisoned for two years and fine can be imposed

Section 11(6) provides that a person cannot be released on bail or bond or a court cannot release a person on bail or bond if detained under provisions of COFEPOSA, 1974.

Challenges:

- It is extremely difficult to procure direct evidence against financers and organizers of smuggling, as per the norms of the Evidence Act. Even more so since they use the latest technology to operate from any part of the world without leaving a viable trace.
- The Act was conceptualized to avoid interference by courts. But unfortunately, judicial intervention is rampant. As per statistics, 65- 70% detainees have been released by courts due to procedural or technical grounds.

- Some reasons of granting bail have been:
  - Failure to supply legible copies of documents to the detenue.
  - Lack of RUDs (relied upon documents)
  - Translations of all RUDs in the language known to the detenue were not made.
  - Inordinate delay in sponsoring the cases
- Effectiveness of screening committee, since it meets only once a month and time is lost out in processing the detention order.
- Some feel the Customs Act, 1962 adequately covers the smuggling offences. At times, the act of preventive detention is misused and is used to harass people.
- Most of the times, the action taken under this Act leads to apprehension of petty carriers or small operators.
- Many times, confidential documents are released under the RTI Act. This is at times used against the Ministry. It should be noted that CEIB is exempt under section 24 of RTI Act, 2005. If at all any documents require to be furnished, it should be done only after seeking permission from the authorities.

In the era of liberalization and free trade, it is essential to protect our economy against misuse by such persons. Economic offenders break laws and set a deleterious example for the public. Ingenious methods of frauds and smuggling have become refined making preventive detention an effective deterrent in the hands of the executive.

Gold Control Act, 1968 :

Post-Independence, the foreign exchange drain was accentuated in 1962 during the border dispute with China. Sh. Morarji Desai, then finance minister, came out with Gold Control Act, 1962, which recalled all gold loans given by banks and banned forward trading in gold. In 1963, the production of gold jewellery above 14 carat fineness was banned. In 1965, a gold bond scheme was launched with tax immunity for unaccounted wealth. All these steps failed to yield the desired result. Desai finally introduced the Gold Control Act, on 24 August 1968, which prohibited citizens from owning gold in the form of bars and coins. All existing holding of gold coins and bars had to be converted to jewellery and declared to the authorities. Goldsmiths were not allowed to own more than 100 gms of gold. Licensed dealers were not supposed to own more than 2 kg of gold, depending upon the number of artisans employed by them. They were banned from trading with each other. Desai believed that Indians would respond positively to these steps and stop consuming gold and help conserve precious foreign exchange. New gold jewellery purchases were either recycled or smuggled gold. This legislation killed the official gold market and a large unofficial market sprung up dealing in cash only. The gold was smuggled in and sold through the unofficial channel wherein, many jewellers and bullion traders traded in smuggled gold. A huge black market developed for gold. Gold Smith were unorganised labour force and could not cope with the new developed situation. Only a few could get the licence to hold the gold, that also in very small quantity, with the result that the members of the Sunar caste, who were depending only on their traditional occupation of making gold ornaments, lost their business and their financial condition deteriorated and families shattered.

In 1990, India had a major foreign exchange problems and was on verge of default on external liabilities. The Indian Government pledged 40 tons gold from their reserves with the Bank of England and saved the day. Subsequently, India embarked upon the path of economic liberalization. The era of licensing was gradually dissolved. The gold market also benefited because the government abolished the 1962 Gold Control Act on 6 June 1990 by Finance Minister Madhu Dandvate and liberalized the gold import into India on payment of a duty of Rs.250 per ten grams. The government thought it more prudent to allow free imports and earn the taxes rather than to lose it all to unofficial channel.

Foreign Trade Policy (2015-2020)

The Government of India announced the new foreign trade policy, covering the period from 2015 to 2020, on April 1, 2015 to make India a significant participant in the world trade by 2020. The mission and objectives include the ideology to make the country assume a position of leadership in the international trade. The Government of India aims to increase the exports of merchandise and services from $465.9 billion in 2013-14 to approximately $ 900 billion by 2019-20. Additionally, the policy aims to increase the country's share in the world exports from 2 per cent to 3.5 per cent.

Objectives of FTP (2015-2020) :

- To provide a stable and sustainable policy environment for foreign trade.
- To link the rules and procedures with other initiatives like 'Make in India', 'Digital India' and 'Skills India'.
- To diversify India's exports.
- To provide a mechanism for regular appraisal in order to rationalize imports.
- To improve India's Balance of Payment position.
- To create architecture for India's global trade engagement with a view to expand and integrate markets, thereby augmenting the 'Make in India' initiative.
- Trade Facilitation and Ease of doing Business

<u>Baggage Rules 2006 :</u>

Customs duty on import of gold to India by passengers is currently 10%. Indian origin passengers or those holding valid Indian passports are eligible to import gold provided they are coming to India after a stay abroad of at least six months. Applicable customs duties on gold imports in such cases must be paid in foreign currency by incoming passengers.[44]

Features of Baggage Rules w.r.t. Gold

•Persons of Indian origin (NRI, OCI, PIO) returning to India after a stay abroad of at least six months can take up to 1 kilogram of gold to India.
•This 1 kg of gold is NOT allowed in duty free. Customs Duty has to be paid.
•The weight of gold (including ornaments) should not exceed 1 kg. per passenger.
•The current rate of duty on gold that is within the allowed 1 kg limit is calculated @ 10 % [Notification No.12/2012-Cus]
•The price of gold is calculated based on the value notified by the government of India. This value is subject to change from time to time as market conditions change the value of gold.
•In case the passenger bringing in the gold has not stayed abroad for 6 months, then duty @ 36.05% may be charged on all the gold the passenger arrives with.

Indian passengers who stay abroad for over a year are allowed to bring free of duty gold in the form of jewellery as part of their baggage up to an aggregate value of:[45]

•20gms valued Rs 50,000 for male passengers -
•Rs 1 lakh for lady passengers

Passengers could legally take up-to 10 Kg of gold to India till April 17, 2012. However this amount has been reduced to 1 Kg from April 18, 2012. The maximum amount of gold a passenger can now take to India is limited to one kilogram of gold. Carrying over 1 kilograms of gold to India is prohibited and will result in the gold being seized and the passenger prosecuted under Customs Act 1962.

Notification No 12/2012- Cus dated 17.03.2012 (Sl No 321)[46]

Notification No 12/2012- Cus dated 17.03.2012 (Sl No 321) regarding import of gold by 'eligible passengers' provided that the gold in the form of bars and ornaments are allowed to be imported by 'eligible passengers' upon payment of 10% customs duty. As per the specified condition no. 35 of the said notification, the duty is to be paid in the foreign currency

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[44] Circular No. 06/2014-Customs issued by Department of Revenue, Ministry of Finance

[45] Notification No. 11/2016-Cus dated 1st March, 2016 issued by Department of Revenue, Ministry of Finance

[46] Circular No 12/2012- Cus dated 17.03.2012 by Government of India Ministry of Finance Department of Revenue (Central Board of Excise and Customs)

and total gold so imported should not exceed 1 kg. The notification prescribes that 'eligible passenger' means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967 who is coming in to India after a period of not less than 6 months of stay abroad. Short visits, if any, made by the 'eligible passenger' during the aforesaid period of 6 months shall be ignored if the total duration of stay does not exceed 30 days. Further, the benefit of notification is available only if the passenger has not availed of this exemption in any of such short visits.

Circular No 06/2014-Customs dated 6th March, 2014[47]

With reference to the Notification dated Notification No 12/2012- Cus dated 17.03.2012 (Sl No 321) the Central Board of Excise and Customs (CBEC) observed that there has been a spurt in import of gold by eligible passengers through various airports in the recent past across the country. Further, it was also reported that there was no uniformity in clearance of such eligible passengers. At many airports, the engraved serial number of gold bars and tola bars were not mentioned in the baggage receipts when imported by the passengers. Board took note of the fact that, if this practice is followed, there will be possibility of such documents being used by unscrupulous elements as cover documents for easy circulation of many more gold bars that are smuggled into the country. These documents may also be used to influence cases involving seizure of gold bars in areas other than Customs Area.

Recognizing the sensitivity of the matter, Board directed the Commissioners of Customs/ Customs and Central Excise having jurisdiction of airports to ensure mentioning, of the engraved serial number of gold bars, in the baggage receipt issued by Customs. And CBEC directed its field officers that

(i) In case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt.

(ii) Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them.

[47] Circular No 06/2014-Customs dated 6th March, 2014 by Government of India Ministry of Finance Department of Revenue (Central Board of Excise and Customs)

Structure and functioning of key enforcement agencies

The Central Board of Excise and Customs (CBEC) is the key enforcement agency in India as far as anti-smuggling activities are concerned.

Central Board of Excise and Customs

CBEC is the nodal agency for formulation of policy concerning levy and collection of customs duty as well as prevention of smuggling. It is the administrative authority of various subordinate organisations looking into various aspects of governance relating to customs duty and smuggling. Some of its key functions include:[48]

Collection of customs duties on imports and exports;

- Enforcement of the Customs Act of 1962;
- Enforce prohibition and restrictions on import and export;
- Prevention of smuggling and
- International passenger clearance.

CBEC has various field formations to levy and collect revenue and prevent smuggling under the Customs Act of 1962. These include 11 zones of Customs & Customs (Preventive) and 35 Commissionerates spread across the country.[49] These commissioners have been given the task of:

- Implementation of the Customs Act of 1962 and the allied acts, which includes levy and collection of customs duties and enforcement functions in their earmarked jurisdiction (Commissioners of Customs) and
- Surveillance of coastal and land borders to prevent smuggling activities. Marine and telecommunications wings are available with the Board to assist these Commissionerates in their anti-smuggling work and surveillance of sensitive coastline (Commissioners of Customs (Preventive)).

In addition to the Customs Act, the Customs Department also works to ensure compliance with various other national and international laws and regulations. It is the responsibility of the Customs to handle international traffic speedily and effectively while ensuring that all movement of goods and passengers across the national borders are in conformity with the laws of the land.

Appellate and adjudication machinery of the CBEC has 67 Commissioners of Central Excise and Customs (Appeals). There are four Commissioners (Adjudication) – one each in Mumbai, Delhi, Chennai and Bangalore who deal with both customs and excise related cases. In addition, the union government has appointed 11 more Commissioners (Appeals).

Anti-smuggling machinery

[48] Customs Manual, 2015, CBEC Customs Manual, 2015; CBEC, Department of Revenue, GOI.

[49] http://www.cbec.gov.in/htdocs-cbec/info-act/customs/customs

There are two key units of CBEC which work for preventing smuggling – Directorate of Revenue Intelligence (DRI) and Directorate of Logistics (DoL).

Directorate of Revenue Intelligence (DRI)

DRI is a major intelligence agency working under CBEC to prevent smuggling. It was constituted on 4th December 1957 and exercises all the powers specified in Section 100, 101, 103, 104, 106, 107 and 110 of the Customs Act, 1962. DRI has established an intelligence gathering network which relies on traditional human intelligence resources as well as contemporary technical gathering tools.

DRI collects, analysis and disseminates intelligence to the field formations, helps in investigation and keeps statistics of seizures and prices/rates etc, for watching trends of smuggling, movement of other contraband and suggests remedies for fixing loopholes in existing laws and procedures.

The charter[50] of the organization lists the following activities:

- Collection of intelligence about smuggling of contraband goods, narcotics, under-invoicing etc. through sources of India and abroad, including secret sources;
- Analysis and dissemination of such intelligence to the field formations for action and working on such intelligence, where necessary;
- Keeping watch over important seizures and investigation cases. Associating or taking over the investigations which warrant specialized handling by the Directorate;
- Guiding important investigation/prosecution cases. Keeping liaison with foreign countries, Indian Missions and Enforcement agencies abroad on anti-smuggling matters;
- To keep liaison with C.B.I. and through them with the INTERPOL. To refer cases registered under the Customs Act to the Income Tax Department for action under the Income Tax Act;
- To keep statistics of seizures and prices/rates etc. for watching trends of smuggling and supply required material to the ministry of Finance and other ministries
- To study and suggest remedies for loopholes in law and procedures to combat smuggling. The investigations carried out by DRI are done in accordance with the provisions of the Customs Act 1962. Details of investigations conducted during the year are maintained in the database called in DRI Profiling System (DRIPS) along with the status of show cause notices.

Headed by a Director General, DRI has 7 zonal units across India. These units are further divided into several regional, sub-regional and intelligence units. The working strength of DRI is 544 against sanctioned strength of 740. However, the percentage of the deputation staff is about 43% of the posted strength and average vacancy is at 26.50. DRI uses IT systems for the Intelligence Support

[50] http://dri.nic.in/home/charter

System (ISS) and DRI Profiling system (DRIPS). All headquarters and zonal offices are well connected with these IT systems.[51]

Intelligence/ Information Gathering Mechanism

DRI receives Information through various sources such as e-mails, phone calls, personal visits, and post etc. Once information is received, it is examined and analysed for its prima facia authentication for further actions. The intelligence/ information is recorded under DRI -1 database (a specific mechanism for recording of information which also enables the informer to reward). In addition to information, DRI also detects and investigates technical smuggling cases on the basis of intelligence gathered and developed on the basis of import/ export data.[52]

The informers and the Government servants are eligible for reward up to 20% of the net sale proceeds of the contraband goods seized and/or amount of the duty evaded plus amount of the fine and penalty levied/ imposed and recovered.[53]

The Customs Overseas Intelligence Network (COIN) unit of the DRI gathers information from overseas or information as requested by the Zonal units.

Investigation and Adjudication

Investigation is done by DRI under the various provisions of the Customs Act, 1962. Database of investigations during the year is maintained in the DRI profiling system along with status of the show cause notices (SCN). SCN are issued after investigation is over within the stipulated time period of six months. Special extension is taken as provided for in section 110 of the customs act 1962, where goods are seized during investigation, unless provisional release of goods is allowed. In case of the duty evasion in imports, whenever the extended period of 5 years is invoked in terms of the section of 28 of the customs act 1962, SCN has to be issued within 5 years.[54]

The adjudication of cases lies with the adjudicating authority which is part of the Commissionerate system. A copy of the adjunction order is sent to the respective DRI Zonal Unit for updating of the adjunction records in DRIPS. However, DRI does have monitoring of adjudication of SCNs.

Coordination and Information Sharing

Information are shared with zonal units, field formations and other ministries and departments on case to case basis depending on the nature of information/ intelligence. Sharing of intelligence/ information is done with other agencies such as ED, IT etc through central economic intelligence bureau

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[51] Chapter II Working of DRI, Report No. 8 of 2015, Union Government of India (Indirect Taxes)

[52] Chapter II Working of DRI, Report No. 8 of 2015, Union Government of India (Indirect Taxes)

[53] Ministry of Finance circular no. R-13011/6/2001-Cus (AS), 20th June 2001

[54] Chapter II Working of DRI, Report No. 8 of 2015, Union Government of India (Indirect Taxes)

(CEIB), and regional Economic Intelligence committee (REIC) meetings that are held periodically. DRI is the nodal agency for contact with Regional International Liaising office (RILO) that works under the umbrella of the World Customs Organisation (WCO).[55]

Directorate of Logistics

Directorate of Logistics (DoL) is an attached office of CBEC which provides logistical support to prevent smuggling. It was set up in 1979 by re-organising the Directorate of Anti smuggling, Directorate of Communication and Directorate of Marine to co-ordinate all the activities related to anti-smuggling (logistics) under the CBEC.

DoL has its headquarters at New Delhi and is under the supervisory control of a Commissioner rank officer. It has a multilevel structure, constituting three divisions – Anti- smuggling, Communication and Marine Divisions. It is the nodal agency to monitor the logistical requirements of field formations pertaining to the three divisions. It works in close co-ordination with the CBEC, Chief Commissioners and Commissioners of Customs & Central Excise including DGDRI.

The function of these three Divisions of this Directorate have been enumerated in the said circular and are summarized below:

Anti-Smuggling Division	Communication Division	Marine Division
Assessment of the needs of Anti-Smuggling Equipment (including arm & ammunitions) of field formation, formulation of proposals for their purchase, obtaining of sanctions from the Ministry and acquisition, installation/distribution of the same.	Examining proposals for appropriation/ condemnation of vessels received from maritime Commissionerates and extending technical support.	To plan and formula to wireless communication proposals for Customs Preventive Commissionerates and obtaining sanctions from the Ministry for acquisition of wireless equipment.
Monitoring of the stocks of seized, confiscated and ripe for disposal goods with the Commissionerates.	Procurement and supply of technical and general sea stores through Central Stores Yard, Mumbai.	Distribution of wireless equipment amongst the Commissionerates and monitoring wireless traffic passed over the wireless networks.
Inspection and stocks taking of the anti-smuggling equipment and stocks of seized, confiscated and ripe for disposal goods in the anti-smuggling wings of the Commissionerates/ Custom Houses.	Overall supervision and control over the four workshops for repair of the vessels.	Providing support for the maintenance and repair of wireless equipment in the Commissionerates and Inspection thereof, and training of telecommunication staff.
Maintenance of statistical data bank relating to Investigations, Adjudications, Rewards, Prosecutions stocks and disposal of goods and preparation of monthly Performance Indicators bulletin.	Maintaining statistical data pertaining to crafts and crew.	Coordination with regional command Security Committees under Ministry of Defence in the matters relating to breaches of communication security.
Loaning of seized/confiscated arms to departmental officers and acquisition and deployment of Sniffer dogs.	Recruitment of trained and disciplined technical personnel for operating vessels, workshops and Central Stores Yard.	

Source: Directorate of Logistics, (http://www.dolcbec.gov.in)

This Directorate caters to the needs of about 66 operational Customs Stations along with international borders, 94 ports including 12 major ports and 36 international ports handling cargo and baggage, besides foreign post offices and Land Customs Stations, ICDs etc. which

[55] Chapter II Working of DRI, Report No. 8 of 2015, Union Government of India (Indirect Taxes)

too are vulnerable to smuggling. Thus, DoL provides logistical support at the land and at the sea. There are designated Chief Commissioner of Customs to handle passengers and air-cargo – imports and exports.

All smuggling related activities of import and export in India are governed through a structured machinery under the statute of law. Customs authorities have continued to make all efforts to curb illicit trade and facilitate movement of legal trade. The Government of India too has, in their support, made regular amendments to the Customs Act, 1962 to suit the changing environment and rising threat of smuggling. Yet, there are leakages in the process which result in huge losses to the government and industry. There are several constraints faced by the Customs authorities which hamper their efficiencies.

Gold control - Policies and Reforms

The Indian government's interest in the gold market dates back to independence. In order to better understand the differing approaches taken and their respective consequences, the policies from 1947 to present is assessed. This period is divided into five phases

Restriction (1947–62)	**Intervention (2012–2013)**
• Foreign Exchange Regulation Act (FERA) introduced in 1947 • Nationalisation of Kolar gold mine at Mysore took place in 1956 • Replacement of the proportional reserve system with the minimum reserve system for currency issue in 1956 • First Gold Bond Scheme introduced in 1962.	• Duty hike to 10% from 2% through repeated increases between January 2012 and August 2013 • Introduction of the "80:20 rule", an export obligation of 20% on importers of gold[138] • Ban on import of gold coins and sales through banks and post of ces[139] • Reducing the loan that can be given against gold as collateral from 75% to 60% of the value (LTV ratio).[140]
Prohibition (1963–1989)	**Transparency (2014 till today)**
• Gold Control Rules (1963) • Gold (Control) Act (1968) • Gold Bonds 1980 (March, 1965) • National Defence Gold Bonds 1980 (October, 1965) • Voluntary Disclosure of Income and Wealth (Amendment) Ordinance (1975) • Gold auctions (1978).	• Removal of "80:20," an export obligation of 20% on importers of gold (November 2014) • Ban lifted on import of gold coins (November 2014) • Gold Deposit Scheme of 1999 withdrawn and relaunched in new form
Liberalisation (1990–2011)	

• Gold Control Act 1968, repealed in June 1990 • NRI Scheme introduced in March 1992 • Scope of Special Import License (SIL) scheme expanded to include gold in April 1994 • In 1997, seven banks were authorized to import gold – a number that was later increased to twenty banks. Gold Deposit Scheme (GDS) launched by State Bank of India in 1999 • Gold Deposit Scheme (GDS) launched by State Bank of India (1999) • Banks permitted to sell gold coins in 2002, extended to India Post in 2008.	as Gold Monetisation Scheme (November 2015) • Launch of first ever National gold coin – Indian Gold Coin (November 2015) • Sovereign Gold Bond Scheme launched (November 2015) • PAN (Tax Number) made mandatory on jewellery purchases above Rs200,000 (January 2016) • Introduction of 1% Excise duty on Jewellers above Rs120mn turnover (April 2016) • Demonetisation of INR500 and INR1,000 notes (November 2016) • Removed 1% excise duty on branded gold coins with purity of 99.5% (December 2016) • New Bureau of Indian Standards (BIS) Act introduced that makes Hallmarking mandatory, effective 1 January 2017.

PHASE-1 (1947 TO 1962) – RESTRICTIONS (Ban on private ownership of gold)

Foreign Exchange Regulation Act 1974:

Before the independence the internal price for gold was only Rs. 21 per 10 grams while the international price was Rs. 34 per 10 grams.[56] Naturally it was profitable to export gold. The traditional demand for gold was savings demand and not speculative demand. In India the huge and increasing demand for gold led to the policy of refusing gold import licensing. Since licenses were not introduced, gold was mainly brought by illegal transit or smuggling. Amid the first stage, 1947-1962, approaches were generally equipped towards controlling the gold market in India. The Imports and Exports (Control) Act was enacted in 25th March 1947. Estimates show that during 1948-49 around 27.36 tonnes of gold was smuggled to India. It increased to 35.35 tonnes in 1950-51 and to 53.27 tonnes in 1952-53. There was more than 50 percent decline in the gold smuggled during 1955-56 and fell down

[56] www.goldprice.in

to 26.27 tonnes.[57] This reduction in 1955 was due to the measures undertaken by the government in the annual budget 1953-54 to arrest the drain in gold reserves, and as a result the drain was halted to a certain extend. In this period the Indian government had banned gold imports and then later brought in a new licensing system. Neither had the coveted impact, and rather saw the growing of illegal carrying rings. The consequence of the world war two led to the arousal of such an act. The main intention behind such a restrictive approach to gold was, to detach people from gold, to manage the gold supply in the country, to reduce smuggling, to bring down the demand for gold and to decrease the domestic price of gold. In 1947 the price of gold was Rs 88.62/10gms. After the announcement of the act there was not reduction in the price. Price of gold increased to Rs95.87/10gms in 1949 and dipped to Rs 79.18/10gms in 1955.[58]

Kolar Gold Mining Acquisition Act:

Another notable event in this phase is the nationalization of the Kolar Gold Mines. In spite of production more than 95 % of India's gold output annually the mines started declining; hence they were nationalized and handed over to the government to prevent closure. In 1958 the government tried to retain the domestic output from the mine as unofficial reserves. Around 520 tonnes of gold was unofficially imported between 1958 and 1963.

Gold Control Act 1962:

Post-Independence, the foreign exchange drain was accentuated in 1962 during the border dispute with China. The steep increase in gold price at Rs 119.75/10 gms and uncontrolled smuggling compelled Sh. Morarji Desai, then finance minister, came out with Gold Control Act, 1962, which recalled all gold loans given by banks and banned forward trading in gold. In 1963, the production of gold jewellery above 14 carat fineness was banned. In 1965, a gold bond scheme was launched with tax immunity for unaccounted wealth. All these steps failed to yield the desired result.

PHASE-2 (1962 TO 1989) : PROHIBITION (Era of Gold Control Act)

This restrictive approach was enhanced between 1963 and 1989. The Gold Control Rules were promulgated in 1963 and the penal provisions were enacted under the Gold (Control) Act 1968, whereby several additional restraints were placed on gold businesses, including:

- Manufacturing gold jewellery above 14-carat purity was prohibited
- Limits were placed on individual holdings of gold jewellery
- Individuals and families could only hold up to two and four kg of gold, respectively, and only in the form of jewellery, which had to be declared to the authorities
- Jewellers were obliged to maintain records of all business transactions.

At the same time the government tried to mobilise gold by issuing gold bonds, introducing gold

[57] Asia Pacific Journal of Research ISSN: 2320-5504, E-ISSN-2347-4793 Vol: I. Issue XXXVI, February 2016

[58] Asia Pacific Journal of Research ISSN: 2320-5504, E-ISSN-2347-4793 Vol: I. Issue XXXVI, February 2016

auction schemes and through the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance (1975),[59] which encouraged Indian households to disclose hitherto undeclared wealth, including gold. These efforts were designed to control the budget deceit and reduce gold smuggling.

Gold Control Rules 1963:

The rule in 1963 promulgated to impose severe restrictions on the gold market. Gold jewelry above 14 carat was banned. Government tried to exercise control over domestic trade and gold distribution was firmly established. The price of gold descended to Rs 63.25 per 10 grams. The result was that the demand for gold remained strong as ever and gold smuggling became the order of the agenda. Smuggling of gold accounted to 30-70 percent of actual imports. The hawala market flourished to pay for the smuggled gold through remittances.

National Defence Gold Bonds:

The Government of India had issued a bond in 1965 which redeemable after 15 years, that was, after 1980. This was launched with the benefit of tax immunity for unaccounted holdings. The smuggled gold amounted to 720 tonnes between1964 to 1967. But the newly launched steps failed to yield the expected results. The price of gold also increased to Rs 102.50 per 10 grams in 1967.

Defence of India Rules:

The rule was introduced in 1966. Fabrication of jewellery above fourteen carat was permitted, but the personal possession of gold bars and coins were banned. Specified limits of the gold jewellery had to be declared by the owners. Rigid control over gold refineries was made with a target to bring gold refineries under the government authority.

Gem and Jewellery Export Council:

The gem and jewellery export council was also established during 1966. The main vision was to main India the source of quality gems and jewellery.

Gold Control Act 1968:

Sh. Morarji Desai finally introduced the Gold Control Act, on 24 August 1968, which prohibited citizens from owning gold in the form of bars and coins. All existing holding of gold coins and bars had to be converted to jewellery and declared to the authorities. Goldsmiths were not allowed to own more than 100 gms of gold. Licensed dealers were not supposed to own more than 2 kg of gold, depending upon the number of artisans employed by them. They were banned from trading with each other. Desai believed that Indians would respond positively to these steps and stop consuming gold and help conserve precious foreign exchange. New gold jewellery purchases were either recycled or smuggled gold. But all the plans were back stabbed. This rule murdered the official gold market and a large illegal market sprung up. The price of gold kept increasing from Rs 162, Rs 176, Rs 184, and Rs

[59] **CIRCULAR NO. 183, DATED 11-11-1975 of Income Tax Department**

193 per 10 grams for the years 1968, 1969, 1970 and 1971 respectively. The smuggled gold accounted 750 tonnes from 1968 to 1973. This legislation killed the official gold market and a large unofficial market sprung up dealing in cash only. The gold was smuggled in and sold through the unofficial channel wherein, many jewellers and bullion traders traded in smuggled gold. A huge black market developed for gold. Gold Smith were unorganised labour force and could not cope with the new developed situation. Only a few could get the licence to hold the gold, that also in very small quantity, with the result that the members of the Sunar caste, who were depending only on their traditional occupation of making gold ornaments, lost their business and their financial condition deteriorated and families shattered. The government abolished the 1962 Gold Control Act on 6 June 1990.

Bharat Gold Mines Limited:

In 1972 the BGML was built up by the administration of India under the Ministry of Mines and the Kolar mines were given over to the BGML to be kept running as open segment undertaking of the central government.

Voluntary disclosure of Income and Wealth Ordinance:

The administration attempted to activate gold by issuing gold bonds and gold auction plans through the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance (1975). These endeavors were intended to control the monetary allowance shortage, address possibility issues and lessen gold sneaking in India.

Gold Auctions:

An auction sale was conducted by the government in 1978 between April and October. The sale was made to the certified goldsmiths and licensed dealers. Around 13 tonnes of gold was sold. The price of gold was Rs 685 per 10 grams and 210 tonnes of gold arrived unofficially to the country during 1974 to 1978.

PHASE-3 (1990 TO 2011) : LIBERALISATION (policy aimed at deregulation)

Between 1990 and 2011 India started to liberalise and a different approach was adopted, as the government introduced measures to deregulate the gold industry:

- The Gold (Control) Act 1968 was repealed on 6 June 1990. Under this policy regime gold smuggling had flourished. Now, the liberalisation of gold imports took priority
- The Non-Resident Indian scheme was introduced in 1992, and in 1994 a Special Import Licence (SIL) scheme was launched to facilitate entry of gold into India
- In 1997, under the Open General Licence (OGL) scheme, seven banks were initially authorised as official importers of gold; this number later increased to 20
- In 1999, the government tried to mobilise gold through the Gold Deposit Scheme (GDS), launched by the State Bank of India to allow gold to be deposited at a specified interest rate.

The end of this phase was marked by rising gold demand, gold imports and gold prices. In 2007, demand totalled 771.1 tonnes. It peaked at 1001.7 tonnes in 2010, reduced slightly in subsequent years, but remained between 850–950 tonnes.[60] At the same time, the gold price more than trebled and the current account deceit (CAD) began to spiral out of control.

Between 1990 and 2006, a different approach was adopted as the government introduced measures to deregulate the gold industry. By 1985, India had begun having balance of payment issues. Before the end of 1990, India was in a genuine financial crisis. The government was near default, its central bank had denied new credit and foreign exchange reserves had been lessened to such a point, to the point that India could scarcely back three weeks of imports which drove the Indian government to transit national gold reserves as a promise to the International Monetary Fund (IMF) in return for an advance to cover equalization of balance of payment obligations.

The period amidst 2007 and 2009 has been the most tumultuous in monetary market's late history as the world economy dove into 'great Recession'. It brought about banks breakdown, equity markets tumbled over the globe, exchange contracted, capital flows became scarce, development drooped and credit spreads heightened sending speculators escaping for the front of conventional place of refuge resources, for example, government securities and gold. Most outstandingly, the novel component of the Recession was that, it for all intents and purposes put even the long trusted monetary establishments, to corrosive test on their fitness of liquid portfolio administration. Also, conveyed to the fore the phenomenal weakness of the global financial system to interruptions in wholesale funding markets. Indeed, even extremely old financial institutions were lessened to rubble. The fourth phase started in 2007, just ahead of the global financial crisis. This phase has been pronounced by ascending gold demand, increasing imports, rising prices and a huge current account deficit.

Repeal of Gold Control Act:

This ordinance was set up in 1990. The domestic trade was deregulated. Merchants, fabricators, retailers and refiners could work without requirement for licenses. Confinements on the private responsibility of gold were uprooted. In any case, at this stage, there was no approach to encourage the official import of gold. In 1990, India had major remote trade issues and was on edge of default on outside liabilities. The Indian Government vowed 40 tons gold from their reserves with the Bank of England and spared the day. In this manner, India set out upon the way of monetary liberalization. The time of authorizing was steadily broken up. The gold market additionally profited in light of the fact that the legislature nullified the 1962 Gold Control Act on 6 June 1990 by Finance Minister Madhu Dandvate and changed the gold import into India on instalment of an obligation of Rs.250 per ten grams. The administration thought it more judicious to permit free imports and procure the expenses as opposed to lose it all to the informal channel. The price of gold was Rs 3200 per ten grams and the consumer demand for gold in the country accounted to 178 tonnes. 176 tonnes of gold arrived through the official

[60] GFMS, Thomson Reuters, RBI, World Gold Council – Figure 1.2 : India's dependence on Gold Import

channels. About 5596 kgs of gold was smuggled during the year.

NRI Scheme & SIL License:

Non-resident Indian scheme: The NRI scheme was presented in 1992, along with a Special Import License (SIL) which was extended to incorporate gold as an import commodity in April 1994. These plans were to encourage opening of gold into India. But this scheme only increased the consumer demand for gold from 157 tonnes in 1991 to 264 tonnes in 1992. The price of gold also increased from Rs 3466 to Rs 4334 per 10 grams in 1991 and 1992 respectively. With the modified import license the gold import through official channel was 262 tonnes. This helped in reducing the illegal gold purchase to 2889 kgs in 1992, which was 4946 kgs in 1991. The new policies helped to reduce smuggling to a great extend. The year 1993 and 1994 was followed with further declines in the smuggled gold. It crashed to 1372 kgs and 1147 kgs in 1993 and 1994.[61]

Bank authorization:

In 1997, The Reserve Bank of India approved seven banks to go about as offices for import of gold, silver and platinum, in particular the Bank of India, Allahabad Bank, Indian Overseas Bank, Canara Bank, ABN-Amro Bank, Bank of Nova Scotia, and Standard Chartered Bank. With new banks operating official imports increased to 642 tonnes in 1997. The consumer demand for gold was 675 tonnes in the same year. The price declined from Rs 5160 per 10 grams in 1996 to Rs 4725 per 10 grams in 1997. The illegal arrival of gold was computed to 1325 kg.[62]

Gold deposit scheme:

In September 1999, the Government of India dispatched a Gold Deposit Scheme to use the unmoving gold and at the same time give a gain to gold owners and lessen the nation's dependence on imports. The administration attempted to activate gold through the Gold Deposit Scheme (GDS), dispatched by State Bank of India to permit gold reserves at a predetermined interest rate. In any case, this arrangement was not generally acknowledged by the populace. The total consumer demand for gold was 654 tonnes for the year 1999. The price of 10 grams of gold was Rs 4234 and around 651 tonnes of gold was imported through official channels. Between 2000 and 2006 government did not initiate any strict import policies. This helped the government to an extent to reduce the smuggling. But the year 2004 marked a shocking figure of 225.99 crores worth of gold smuggling which was only 10.04 crores worth gold in 2003. About 70.40 percent increase in smuggling was seen in all sections during 2004. Further the officials were successful in controlling and the preceding year marked an amount of Rs 1.14 crores of gold smuggling which again dripped to Rs 0.28 crores in 2006.[63]

Gold ETFs:

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[62] Asia Pacific Journal of Research ISSN: 2320-5504, E-ISSN-2347-4793 Vol: I. Issue XXXVI, February 2016

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They started functioning in India from March 2007. Gold exchange-traded products are exchange- traded funds (ETFs), closed-end funds (CEFs) and exchange-traded notes (ETNs) that intent to trail the price of gold. In 2007, consumer demand for gold total 773 tonnes. At the same time, the gold price was Rs 10800 per ten grams.

Foreign trade policy 2009-2014:

The main objective of the FTP policy 2009-2014 was to double the percentage share of international trade within five years and to act as a powerful equipment of economic growth by giving and upshot to employment. Fortunately or unfortunately this period witness a high growth in consumer demand, gold price, smuggling and importing. The trade policy did not prove much effective to the behavior of the Indian consumers towards gold. The price of gold which was Rs 10800 in 2007 peaked at Rs 29236 per 10 grams in 2013. The demand also remained around 900-1000 tonnes from 2010-2014. To try and cutback the current account deficit and bring down the depreciation of the rupee, the government started introducing restrictions on the gold market.

PHASE – 4 (2012-2013) : INTERVENTION

- Duty hike to 10% from 2% through repeated increases between January 2012 and August 2013
- Introduction of the “80:20 rule”, an export obligation of 20% on importers of gold
- Ban on import of gold coins and sales through banks
- Reducing the loan that can be given against gold as collateral from 75% to 60% of the value (LTV ratio).

Import restrictions:

The year 2013 was unforgettable in the history of India. The government could not control the public consumption or the price of gold. The price of gold reached its zenith level of Rs 29236 per 10 grams along with an increase in the consumer demand at 974 tonnes. The current account deficit way warded intractably. The government had to impose import duty for around five times in one single year. On 21st January 2013 Indian import duty on gold was raised from 2 percent to 4 percent, which soon raised to 6 percent in short span. Surprisingly they were successful in dipping the gold imports to 215 tonnes in January to March. But in April to June the gold imports again jumped to 336 tonnes. Before lingering for long the Indian import duty on gold again raised from 6 percent to 8 percent on June 5th 2013. This helped to bring down the gold imports to 31.5 tonnes on monthly basis. On 13th August 2013 once again the Indian import duty on gold was increased from 8 percent to 10 percent. But after the initial effects of the restrictions fade away the consumers soon get used to the new price and start to consume and import more. Finally the government had to increase the import duty from 10 per cent to 15 per cent September. The most devilish side of this import charges was reflected in the form of smuggling. The year 2013 marked an Rs 173.42 crore worth of recorded gold smuggling where as there are many unrecorded cases.

80:20 Scheme:

The Reserve Bank of India introduced 80:20 scheme in August 14th 2013. under this scheme 20 per cent of the total gold imports was to be exported back.[64] Further imports were not permitted if this 20 per cent norm is not met by importers. This move was to curb rising gold imports which led to high current account deficit. However, when the Government took charge at the centre in May, 2014, the Reserve Bank of India announced on 28th November, 2014, the removal of the 80:20 import restrictions with immediate effect.[65]

PHASE – 5 (2015 - till Today) : TRANSPARENCY

The 2015 budget presented by Arun Jaitley on 28th February 2015 announced three gold policy measures; Gold Monetisation Scheme, Sovereign Gold Bond and an Indian Gold Coin.

Gold Monetisation Scheme [66]

The objectives of this scheme are:

- To mobilise the gold held by households and institutions in the country
- To provide a boost to the gems and jewellery sector in the country by making gold available as a raw material on loan from the banks
- To boost recycling and reduce India's reliance on imports to meet domestic demand.

This scheme is expected to function identically like the bank account. In case of bank account individuals receive interest for their deposit. Similarly this scheme will provide interest to the households and jewellers for the gold deposit they make with the bank. The bank will also lend the

[64] RBI Circular No. 25 dated 14th August, 2013 - A.P. (DIR Series) RBI/2013-14/187
[65] RBI Circular No. 42 dated 28th November, 2014 - A.P. (DIR Series) RBI/2014-15/329
[66] RBI Master Direction No. DBR.IBD.No. 45/2015-16 dated 22nd October, 2015

deposited gold to the jewellers who require gold for their daily business purpose. The scheme was introduced with a vision of two prolonged benefit, firstly it will help to reduce gold imports. Secondly, the gold that is unproductively stashed away in house hold lockers can be brought into circulation. This will save the country's billions of rupees annually.

The gold monetisation scheme deposits fall into two categories: a Short Term Bank Deposit (STBD)[67] and a Medium and Long Term Government Deposit (MLTGD)[68]. In the GMS customers can deposit gold in any form – be that jewellery, ornaments or bars and coins – to be assayed and then credited to the appropriate account.

The principal and interest on an STBD are denominated in gold. In the case of MLTGD, the redemption of the principal at maturity shall, depending on the depositor's preference, be either in Indian Rupees equivalent to the value of gold at the time of redemption, or in gold. Where the redemption of the deposit is in gold, an administrative charge of 0.2% of the notional redemption amount in terms of Indian Rupees is applied. But the depositor does not have this flexibility when it comes to the interest; the interest accrued on MLTGD is calculated with reference to the value of gold in terms of Indian Rupees at the time of the deposit and is paid in cash.

The scheme has had a slow start. According to the Finance Ministry, 5.7 tonnes of gold has been collected under the Gold Monetisation Scheme. Most of these deposits have been from temples and trusts. Nevertheless, it is worth considering what success would look like for this scheme. It is well documented that the previous Gold Deposit Scheme launched in 1999 only managed to mobilise around 15t over its lifetime. The latest scheme is still very much in its infancy: incentives and infrastructure need to be developed. In our view, if the scheme has accumulated 25–30t in the next three years, it could be considered a success.

GMS-linked Gold Metal Loan (GML) scheme

Introduced in late 2015, the objective of this scheme is to use the gold mobilised through the monetisation to reduce imports of gold to some extent. The Reserve Bank of India specified that the gold mobilised under STBD may be provided to jewellers as GML. The designated banks can also purchase the gold auctioned under MLTGD and extend GMLs to jewellers.

Under this scheme, jewellers will receive physical delivery of the gold either from the refiners or from the designated bank, depending on where the re ned gold is stored.

[67] STBD–ShortTermBankDeposit–ThedepositofgoldmadeundertheGMSwithadesignatedbankforashorttermperiodof1–3years.

[68] MediumandLongTermGovernmentDeposit(MLTGD)–ThedepositofgoldmadeundertheGMSwithadesignatedbankintheaccount of the Central Government for a medium term of 5–7 years or a long term period of 12–15 years or for such period as may be decided from time to time by the Central Government.

Designated banks other than the nominated banks are eligible to import gold only for the redemption of the gold deposits mobilised under the STBD. The designated banks are free to determine the interest rate to be charged on GMS-linked GML.

Sovereign Gold Bond(SGBs):

Sovereign Gold Bonds (SGBs) are government securities denominated in grams of gold. They are substitutes for holding physical gold; they are not backed by physical gold. Investors have to pay the issue price in cash and the bonds will be redeemed in cash on maturity. The Bond is issued by the Reserve Bank on behalf of the Government of India.

Similarly in a gold bond the households operating as investors will be able to lend money to the government by investing in a bond whose price is based on the price of fixed amount of gold. After the sales of the gold bond, the bond holder will receive an amount equivalent to the value of gold on that date.

The Finance ministry has recently permitted listing and trading of the first tranche of gold bonds. Trading in these bonds began on 9 June 2016 on both the Bombay Stock Exchange and the National Stock Exchange.

While it may appeal to institutional investors, this is unlikely to appeal to retail investors. For them, physical gold is more than just a financial return. Gold is entwined with religion and emotion. In our view, the Soverign Gold Bond Scheme is unlikely to affect physical gold demand.

4. Conclusion & Suggestions

1) **Demand & Supply :**

In India, besides the economic and strong social considerations, individuals are highly sentimental about the gold jewellery in their possession. Gold has emotional, cultural and financial value. Indians have an insatiable appetite for gold.[Ref.: my research findings in Chapter-1 of this dissertation]. India is the largest consumer of Gold of qty 848.0 MT in year 2015, stands 2nd in consumption next to China. [Ref.: page-6] Around 52% of the gold in the world market is used for Jewellery (Out of which 78% is used for making jewels in India) [Page7]

There is just huge gap of 884.2 tonnes of gold between the domestic supply of 102.80 tonnes against the big demand of gold of 987 tonnes.(Ref. : GFMS Survey 2014, page No. 15]. To meet huge demand of gold, India has to rely upon import only as for many reasons domestic supply / productions of gold cannot be increased. Gold is the second largest Import commodity of India only after the mineral fuels which signifies that how important is gold for

Indians. [*Commodity.com at https://commodity.com/country-profiles/india/ (page-2)]*. In the year 2017, India had to import 901 MT of gold from other manufacturing countries viz. USA, China, Australia, Russia and South Africa [page-14, Smaulgld.com at https://smaulgld.com/indian-gold-and-silver-import-charts/]. India is known to be the largest importer of gold in the world.

The imports of gold by India have been rising unabated in recent years notwithstanding the sustained increase in gold prices. Such large import of gold, when the gold prices are ruling high is one major source of mounting trade deficit. The deterioration in current account deficit (CAD) due to large gold imports has implications for financing the same, which would reduce the foreign exchange reserves and increase the external debt.

2) **Smuggling**:

(i) Whenever normal official trade gets hindered due to economic or non-economic considerations, illicit trade comprises sizeable proportion of trade among such countries. This unofficial or illicit trade is referred to as smuggling.

Sec.2(39) of the Customs Act, 1962 defines "smuggling" as "any act or omission which will render such goods liable for confiscation under Sections 111 or 113 of the said Act."[69]

For sake of better and simple understanding, we can say that Smuggling of goods can be broadly grouped into (a) Outright Smuggling and (b) Technical Smuggling. Outright Smuggling means international trade of goods through illegal channels means by not declaring goods before Customs. Outright Smuggling means the secret movement of goods across national borders to avoid customs duties or import or export restrictions. Technical Smuggling means international trade of goods through legal channel only but evading customs duties and other taxes viz by under-valuation of import goods, misdeclaration etc.

Smuggling, therefore, is a criminal offense of bringing into or removing from a country those items that are prohibited or upon which customs or excise duties have not been paid.

(ii) Magnitude of Smuggling of goods depends upon the market size of the commodity or product. If the domestic market is large and is not fulfilled by the domestic supply of goods, imports step in to fill the vacuum for such goods. Greater reliance on imports, volume of international trade and value of the products give impetus to technical smuggling to evade taxes and duties.

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[69] Sec.2(39) of the Customs Act, 1962 of India

Smuggling of gold in India is primarily driven by the demand and supply gap. India is the second largest consumer of gold in world. The Indian gold jewellery industry is almost completely dependent on imported raw materials. The large domestic market provides smugglers enough arbitrage to fulfil needs of the market through smuggled goods.

The continued demand, relatively price inelasticity of gold demand, low domestic supply of gold, increasing GDP per capita provides greater consumption of gold to be met through gold imports. This provides unscrupulous persons opportunity to smuggle gold to take benefit of both price and demand- supply arbitrage while evading taxes of the legal channels.

From DRI estimates for the year 2011-2015 [Ref.: page 35 - "Invisible Enemy – A Threat to our National Interests" by FICCI CASCADE] we find that Technical Smuggling of Gold increased from Rs.15637 crores in year 2013 to Rs.41,896 crores in year 2015. But as per CBEC Report 2016 [page-33], Smuggled Gold to the tune of Rs.1119.11 Crores only was seized by various enforcement agencies in India viz Directorate of Revenue Intelligence, Rummaging & Intelligence wing of Customs, Special Investigation and Information Branch of Customs, Anti-Evasion department, Income Tax, Police department etc. It shows failure of enforcement agencies in combating Gold Smuggling in India.

(iii) Gold Smuggling drastically decreased the volume of revenue collected from various duties and levies by government agencies. For combating Gold Smuggling in India, we have to regulate various key factors that determine extent of smuggling viz. (a) Demand & Supply Gap, (b) High Tariffs Rate (c) Restrictions and Prohibitions, (d) Rule of Law – penal action (e) Extent of Corruption, (f) weak domestic industry

3. **Regulatory Framework :**

(i) **Indians traditionally hoard gold in the belief it will bring financial security. Now India, the world's largest consumer of gold, is seeing a record rise in smuggling, reports Shantanu Guha Ray. [***Shantanu Guha Ray is a Delhi-based journalist* - Why gold smuggling is on the rise in India – BBC NEWS 2014- http://www.bbc.com/news/world-asia-india-26511425]

(ii) An effective policy can unlock the household gold and put it into use in the economy. In order to circulate that gold, the government needs to implement various long term measures. The infrastructure, which the gold market is based upon, needs to be upgraded. The pricing and quality check got to be more standardized. Banks should also try to use gold as a part of liquid reserves. Adopting the right policies would allow gold in India to take its rightful place as a national asset. Though the government can only try to control the domestic consumption and imports. The price of gold set by the international factors is impossible to manage.

(iii) Media reports on gold seizure by various anti-smuggling agencies inform that Sometimes gold is melted into seed-shaped chips and hidden in dates from Dubai, or ground into granules and mixed with other metals to look like ore. The metal is also being converted into gold belt buckles and torch batteries. The smuggling is becoming increasingly difficult to contain, admit regulators. Officials from the Directorate of Revenue Intelligence say smugglers are regularly using the air route, taking advantage of airlines that club international routes with domestic ones using the same flight. Modus-operandi reported is that first, carriers smuggle gold abroad and hide it in the aircraft, while another set of carriers board the same flight on the domestic route and walk away with the consignment. So In my opinion, first and the foremost need of the time is to strengthen our anti-smuggling agencies by imparting them with latest technology knowledge and technical equipment, human resources and a sound infrastructure to combat smuggling.

(iv) Gold demand data indicates that successive attempts to curb the demand for gold have proved ineffective. Restrictive import policies had a limited effect on demand.

Parliament enacted the Gold (Control) Act, 1968 to provide, in the economic interest of the community, for the control of production, manufacture, supply, distribution, use and possession of, and business in, gold, ornaments and articles of gold. The Act was repealed on June 6, 1990.

The pre-1991 era of India's trade policy was marked by a regime of restrictions, controls, permits and licenses. The import policy was largely driven by foreign exchange scarcity. The import of gold was prohibited, except for use by jewellery exporters. History has it that this led to large-scale smuggling of gold into India and the 1960s and 1970s saw the emergence of notorious names in smuggling who gave customs and other anti-smuggling agencies a tough time.

It was only after economic reforms began and foreign exchange reserves became somewhat comfortable that the import of gold was liberalised. The initiative almost brought gold smuggling to a grinding halt. In the past 20 years, the duty rate has changed several times but always retaining its non-ad valorem character.

However, on comparing the Import data of Gold Import and Smuggling data we notice that customs duty is not the only regulatory factor for combating Gold Smuggling in India. In fact an import ban put a huge premium on gold. People are prepared to pay any price for gold. We have seen that considering rate of customs duty, its avoidance may not be lucrative enough for smugglers to take risks, more so when the modern tools of collecting intelligence and the technology available with customs and other agencies would render attempts to smuggle highly vulnerable. It also needs to be noticed when the duty was imposed in 1992, the ad valorem incidence of specific duty imposed on gold was about 15 % — much more than the 4% per in the year 2014, there was no reduction in Gold Smuggling even then.

"The move to increase import duty is not working. In India, everyone - even the poorest of the poor - invests in gold. This move can only work if all the smuggled gold is confiscated by the regulators," says economist Surjit Bhalla.[http://www.bbc.com/news/world-asia-india-26511425]

In contrast, during periods of liberalisation in the gold market demand was met primarily through official channels. Smuggling was curbed, the price differential between the domestic and international gold market narrowed, and the government earned revenue through import tariffs and domestic taxes.

(v) Demonetisation came as a rude shock to many. To increase financial inclusion, the government came out with the Pradhan Mantri Jan-Dhan Yojana in August 2014. Next step was the amnesty scheme for black money hoarders (i.e.Voluntary Disclosure of Income Scheme or VDIS) with only 45% tax that ended on September 30. Since real estate and gold are the other places where people hoard black money, the government is expected to switch focus to them now. India's gold hoard is estimated to be 20,000 tonnes and at current market price, this works out to be a massive Rs 60 lakh crore - four times the total value of the withdrawn Rs 500 and Rs 1,000 notes. This figures give us a hint people may have shifted their black money hoarding from currency notes to gold.

Here again, the path is very clear. The government wants to wean away people from physical gold and has already implemented liberal gold monetisation scheme and sovereign gold bond scheme. The gold monetisation scheme offers good interest and also waiver of capital gains tax on appreciation in the value of gold deposited. So, it makes sense to convert one's gold hoard to these gold deposits, especially if it is held in bullion form. The sovereign gold bond scheme also offers the above mentioned facilities and is aimed at weaning away new gold investors from physical gold.

Gold is one of the biggest items in our import bill and is draining precious foreign exchange. India is the second largest gold consumer in the world after China and any fall in imports can bring down its trade deficit. Though the increase in import duty to 10% has brought down of official gold import (they have crashed 29% to 441 tonnes during January-September period), some part of it might have moved to smuggling routes.

Since terrorists also use smuggling routes, shifting of gold import from official route to smuggling route is not a welcome step for India. That means the government's focus will be on a permanent reduction in domestic gold demand and not just on the import of gold. As of now, PAN card is not compulsory if the purchase is below Rs 2 lakh and a lot of people are splitting their gold purchases into several lots that fall below Rs 2 lakh. As a first step, reduce this cash purchase limit to Rs 10,000.

Asking people to declare their entire gold holdings (in number of grams and not in values) as part of income tax (I-T) returns can be the next step and this will help to get a better estimate of physical gold stashed away in India. Another advantage of this move is to split the gold stash into two -gold hoardings bought with white money (i.e.the one that will be declared) and black money. Litigations after capturing large quantities of gold in raids will also stop because any gold not declared in I-T returns can be treated as 'black', unless they show proof of buying it from the last I-T filing date

Only a small percentage of people file I-T returns in India and so the Best way is to make it compulsory for people who keep large quantities to also file I-T returns, even if they don't have taxable income in that financial year. This limit can be kept at a reasonable level -say 250 grams per head. Once we consider a family of 4 members, this works out to be 1 kg of gold and there is no reason why a person holding more than that should not file I-T returns.

(vi) Demonitisation of currency note of Rs.500 and Rs.1,000, announced by our Prime Minister on 8th November, 2016 resulted into about 86% of the total value of currency in circulation suddenly removed from the financial system. Due to which gold demand faces some short-term headwinds, longer-term prospects are encouraging. The cash crunch is taking its toll on gold demand in the short term.

Further, the introduction of GST, mandatory hallmarking and a massive push by organised jewellers to promote non-cash payment, business practices across the gold trade becoming more transparent. This will the grey market and deter gold demand in grey market. The organised trade will prosper as gold enter the mainstream financial system. Transparency across the value is necessity for gold to be mainstream.

(vii) From above, we infer out that only tariff measures and fiscal policies alone cannot combat Gold Smuggling considerably. Rather, Preventive Measures – including strengthening of anti-smuggling agencies and stern penal action against smugglers is also a must. The Customs department is doing its bit to manage legal trade movement and the parallel illegal channel of smuggling. It has had to move away from the "gatekeeper" approach and are now investing heavily in technology, simplifying processes and recognising information as the basic lever of controlling smuggling. However, to effectively tackle the growing menace of Gold Smuggling in India, a lot more need to be done to make the compliance and processes more robust and detection of such crime easier. Concerted efforts of the government and industry bodies are needed to combat 'Gold Smuggling in India"

An effective policy can unlock the household gold and put it into use in the economy. In order to circulate that gold, the government needs to implement various long term measures. The infrastructure, which the gold market is based upon, needs to be upgraded. The pricing and quality check got to be more standardized. Banks should also try to use gold as a part of liquid

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reserves. Adopting the right policies would allow gold in India to take its rightful place as a national asset. Though the government can only try to control the domestic consumption and imports. The price of gold set by the international factors is impossible to manage.