

Fugitive Economic Offenders Bill 2018

An Analysis

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ABSTRACT:

The concepts of Fugitives have been present in the world from time immemorial, however the concept of Economic Fugitives have sprung up recently when major frauds have been done in the Economic areas. It has been overlooked from a long time while due to the recent events the need to legislate a law that covers the loopholes Earlier legislation like FERA, FEMA and SARFESI Acts, while these acts have loopholes and to fill the loopholes, Fugitive Economic Offenders Bill 2018 was a step towards repairing these loopholes and this article analysis the pros and cons of the bill. The article then further analyses about the International perspective, how the other countries deal with the Economic outlaws and lastly we discussed that is this Ordinance is filling loopholes of the previous laws which are not able to deal with this issue or failed to do so.

I. INTRODUCTION

• **What is Fugitive Economic Offence-** “*Fugitive Economic Offender*” means any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India, who:

1. leaves or has left India so as to avoid criminal prosecution; or
2. refuses to return to India to face criminal prosecution.¹

• **Idea of this bill-** The possibility of this idea originated from Lalit Modi IPL Scam when he fled to London in which he was indulged in payment of IPL money to various nations avoiding the FEMA principles and rules. He was credited with establishing of Indian Premier League. He was proclaimed outlaw in 2011 when he moved to England and his travel permit was revoked by the Enforcement Directorate since he ruptured rules of Foreign Exchange Management Act (FEMA). Be that as it may, he tested and accomplished his passport back however he will never come to India in light of the fact that in the event that he ever comes to India then he may be detained at the Airport and put in ED's custody and on the off chance that he discovered liable then he will straightforwardly go to imprison.²

In any case, as of now Union Government had never thought of bringing such bill in the picture and before Cabinets. This primary plan to display this bill came after Vijay Mallya case, after it was realized that Vijay Mallya had fled the nation to abstain from being captured for financial fraud he has committed. Finance Minister Arun Jaitley had declared in a year ago's Union Budget that the legislature would soon achieve a law

¹ Tojo jose, What is Fugitive Economic Offenders Bill 2018, IndianEconomy.net (March 3, 2018), <https://www.indianeconomy.net/splclassroom/fugitive-economic-offenders-bill-2018/>.

² Anirvan Ghosh, How Lalit Modi Went from IPL King To Wanted Fugitive, HuffPost (15/07/2016 8:25 AM IST), https://www.huffingtonpost.in/2015/06/15/lalit-modi-sushma-swaraj_n_7583868.html.

that would enable the state to claim properties belonging to such guilty parties.³

In Budget Speech of 2017 Finance Minister Arun Jaitley stated that “We will try and make sure that this is passed as fast, as expeditiously as possible because we can’t allow people to make a mockery of the law, that you first indulge in loot and then refuse to submit to the jurisdiction of our legal system, and I think we have a very responsible Parliament.”⁴

The ongoing occurring of the PNB misrepresentation worth more than ₹12000 Cr by Nirav Modi, has made The Union Cabinet has endorsed the Fugitive Economic Offenders Bill, 2017. The bill has given the power to confiscate and sell the assets of the Fugitive Economic Offenders.

This bill was essential to stop individuals like Vijay Mallya, Nirav Modi and Mehul Choksi who are tricking the banking system and sidestepping the procedure of law in India by remaining outside the locale of the Indian Courts.⁵

Before the passing of this Bill the fugitive economic offenders are tried under Recovery of Debts Due to Banks and Financial Institutions Act (RDDDBFI), Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFESI) and Insolvency and Bankruptcy Code (IBC)

II. THE FUGITIVE ECONOMIC OFFENDERS BILL 2018

- **What is the aim of the bill-** The main aim of this bill is to stop the economic related offences and those who leave the country to avoid legal proceeding against them. The scope of this bill is to cover the offences in which ₹100 crores or more amount is involved. The Offences which defined under the Prevention of Corruption Act, the Companies Act, IPC, Limited Liability Partnership Act, and the Insolvency and Bankruptcy Code, the SEBI Act, the Customs Act.

- **How do the government declare a person as ‘fugitive economic offender’?**

The said bill states that the Directors or Deputy Directors under the *Prevention of Money Laundering Act*, have power to file an application to apex court for a declaration of any person(s) as fugitive economic offenders. The application which is filed to apex court should consist following things-

1. reasons for which it should declare the person a fugitive offender

³ Sruthi Radhakrishnan, The Hindu explains: The Fugitive Economic Offenders Bill, 2017, The Hindu (March 06, 2018 12:53 IST) <http://www.thehindu.com/news/national/the-hindu-explains-the-fugitive-economic-offenders-bill-2017/article22908904.ece>.

⁴ Rohan Venkataramakrishnan, What is the Fugitive Economic Offenders Bill and will it bring Nirav Modi back, Scroll.in (March 02, 2018 06:40 pm) <https://scroll.in/article/870567/explainer-what-is-the-fugitive-economic-offenders-bill-and-will-it-bring-nirav-modi-back>.

⁵ K.R. Srivats, Fugitive Economic Offenders Bill seeks to impound, sell assets of fraudsters, Business Line (March 12 2018), <https://www.thehindubusinessline.com/news/fugitive-economic-offenders-bill-introduced-in-ls/article23067921.ece>.

2. provide information about the current whereabouts of the person
3. provide a list of properties believed to be the proceeds of the crime
4. provide a list of properties which the government believes should be confiscated and,
5. provide a list of other persons who may have some interest in those properties.⁶

After this application is filed, the government can attach the relevant papers, evidence, bank statements and all the relevant things to prove its case. Once it's done then apex court will send a legal notice to a person and anyone else who has interest in the attached property. They are required to appear as per specified place and time, no less than six weeks from the date of notice, if they refused then this case will be labelled as fugitive economic offence.

Once a person is declared as a fugitive economic offender, then the government can confiscate the 'proceeds of the crime' even if he is not the owner of that property. All the properties which that person owns will be controlled by the state if he doesn't turn up within the statutory time period.

This bill also states that once a person is declared as fugitive then he is prohibited from filing or defending a civil claim regarding property which is connected to the offence. It means that government takes full control and custody of any attached property. This provision even applies to companies also.⁷

III. DO WE REALLY NEED THIS BILL?

As of late, there has been a lot of occurrences in which there are many wrongdoers and incorporate economic frauds who fly a long way from the nation with the goal that they can get away from the locale of Indian courts; in latest case Kingfisher Airline proprietor Mr. Vijay Mallya took credit of over ₹9000 crores of different Indian Banks, has fled to get away from the legitimate procedures of this situation and Nirav Modi who committed Fraud to Bank Called Punjab National Bank worth ₹12000 Crores and now remaining outside India to get away from the lawful continuing. Along these lines, in such cases to stop the manhandle of the Indian Courts and for the financial enthusiasm of the State this bill ought to have been passed in the Cabinet with the goal that offenses like this can be halted in our nation.

- **Salient Feature of the Bill-**

A declaration that an individual is a fugitive economic offender have to be submitted in form of application to the Supreme Court

Attachment of the property of a fugitive economic offender;

⁶ Supra 4.

⁷ Ibid.

Issue of a notice by the Special Court to the individual alleged to be a fugitive economic offender;

Confiscation of the property of an individual declared as a fugitive economic offender resulting from the proceeds of crime;

Confiscation of other property belonging to such offender in India and abroad, including benami property;

Disentitlement of the fugitive economic offender from defending any civil claim; and

An Administrator will be appointed to manage and dispose of the confiscated property under the Act.⁸

The proposed law will have an overriding effect over all other pieces of legislation. The offender will not be able to pursue any civil cases in India.

- **Negative about this Bill-**

It can be misused because as it does not include the presumption of “guilty until proven innocent” for an accused.

“Anyone can be prosecuted or property can be acquired without the person being found guilty. These provisions are against the fundamental rights,”

If for any reason any person is unable to present in front of court within specific time, then his property will be confiscated which is also against the fundamental rights and opportunity to hear is not given to him. It is against the principle of Audi alteram partem which is the Latin phrase which means "listen to the other side".

- **Constitutionality of this Bill-**

After discussing the negativity of Fugitive Economic Offenders bill, we have to see weather this bill is even constitutionality valid or not. As we discussed the about the proposed bill we can say that this law may be harsh on the individual penalty front; however, it appears to bear the necessary safeguards to withstand a challenge the constitutionality.

The challenge can be done on three grounds-

1. Confiscation of property by the Special Court;
2. On prevention of property, and
3. Disentitlement of the offender to bring forth civil cases.

- **Will this Bill bring Vijay Mallya and Nirav Modi back?**

This thing is hard to tell because it depends upon the fact that, will this bill will have the retrospective effect or

⁸ Tojo jose, What is Fugitive Economic Offenders Bill 2018, IndianEconomy.net (March 3, 2018), <https://www.indianeconomy.net/splclassroom/fugitive-economic-offenders-bill-2018/>.

not. The drafted bill is silent about this thing and not even spell this out and only states that “the Act applies to any individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Act”⁹

Jaitley, in his briefing, also suggested as much, saying the law would apply to all cases, ‘old and new’.¹⁰

However, as we know that only the enactment of law cannot bring back the fugitive economic offenders in our country but with the help on international institution and international agencies it can be possible that we can bring them back and penalise them accordingly.

IV. WAYS TO BRING BACK THE FUGITIVE ECONOMIC OFFENDERS

- **Restructuring the current methods of International Searches:**

The first step toward the Fugitive Economic Offender can be restructuring the current methods of international searches. This could help and find the offender and the obsolete methods can be done away with which does not have any utility. The easy issuance of International Warrant and the easy transfer of Evidence data and Intelligence between the member nations so as to do away with the possibility of false warrant are the necessary steps.

- **Cooperating with International Police Forces:**

Another step could be cooperation of the police forces of the respective member states and the international police forces like Interpol could be very necessary step towards tracking the Fugitive Offenders. The current scenario of Political and Legal Limitations may act as hindrance in such a process and obscure the process of cooperation between national and international police forces. A valid example of such hindrance can be Corruption in these bodies itself.

- **Enacting and Enforcing of Stringent Legislation:**

While the present bill i.e. the Fugitive Economic Offenders Bill, 2017 have been a commendable step towards combating the problem still the problem remains prevalent and thus one of the main step towards reducing the problem suo moto is enacting and enforcing more stringent legislation. The main idea behind the enactment of these legislations should be strict enforcement and not just enactment.

- **Constitution of Central Vigilance Commissions:**

The above suggestions deals with the matters after the fraud or Economic offence has already taken place while

⁹ The fugitive economic offenders bill, 2018.

¹⁰ Rohan Venkataramakrishnan, What is the Fugitive Economic Offenders Bill and will it bring Nirav Modi back, Scroll.in (Mar 02, 2018 · 06:40 pm) <https://scroll.in/article/870567/explainer-what-is-the-fugitive-economic-offenders-bill-and-will-it-bring-nirav-modi-back>.

this suggestion deals with the Vigilance at the regular basis which should be ensured so as to reduce the chances of these offences to take place at the first hand. The Central Vigilance Commission should collaborate with the Central bank in tracking down any fishy activity taking place in the nation's banking system.

V. HOW OTHER COUNTRIES DOES DEALS WITH FUGITIVE ECONOMIC OFFENDERS?

While the enactment is bit of progressive enactment however comparative Acts have been set up in many nations in the created world for quite a while. China in 2014 launched an anti-corruption campaign that was went under the name "*Operation Fox Hunt*".¹¹ This crusade predominantly centred around finding and guaranteeing the removal of corrupt (former) Chinese officials who had become economic fugitives. Such Economic Fugitives have entered other countries obtaining fraud visas and because of this operation 80 fugitives returned to China. Success of this campaign led to launching of yet other orderly campaign in the name of "Operation Sky Net, that, among other objectives, was aimed at the repatriation of economic fugitives."¹² Such a clear precedents exist in many countries such as Malaysia, US, and EU. In United Kingdoms the laws governing and regulating the Economic Fugitives Are Extradition Acts 1870-1932 and the Fugitive Offenders Act 1881.

Truth be told, the United Nations (UN) itself supports seizure without conviction, but under particular conditions. *The United Nations Convention against Corruption* (ratified by India in 2011), for example, urges states to reallocate such properties as they believe may have been collected out of corrupt activities without a conviction in cases in which the wrongdoer can't be prosecuted for simple reasons of flight, death, absence or in other appropriate cases. (Article 54-C). The Fugitive Economic Offenders Bill of India 2018 adopts this principle.

VI. IS FUGITIVE ECONOMIC OFFENDERS BILL TRYING TO PLUG LOOPHOLES IN THE EXISTING LAWS?

Many of the people and the jury is still trying to figure out that whether the Centre did the right thing by bringing in a new legislation called as Fugitive Economic Offenders Bill, so that they can deal with the high-profile offences who indulge in 'loot and scoot' crimes, but why couldn't we strengthened the existing law which is Prevention of Money Laundering Act (PMLA) to achieve the desired outcomes.

¹¹ "180 economic fugitives back in China to face trial."180 economic fugitives back in China to face trial [1] Chinadaily.Com.cn, www.chinadaily.com.cn/china/2014-10/30/content_18828921.htm.

¹² Miller; Additional Matthew. "China says over 150 'economic fugitives' at large in the U.S." Reuters, Thomson Reuters, 11 Aug. 2014, www.reuters.com/article/us-china-corruption/china-says-over-150-economic-fugitives-at-large-in-the-u-s-idUSKBN0GB0CS20140811.

However, the Centre certainly seems to have learnt its lessons as it went about plugging the loopholes in the earlier enactments through the new Fugitive Economic Offenders Ordinance 2018, which is the first Ordinance from the Modi-led Government this year.¹³

Through this ordinance the government has made it clear that no civil claim can be made in any Indian court with regards to confiscation of property which is related to fugitive economic offence. The Prevention of Money Laundering Act was silent on this thing which is pointed out by Aseem Chawla partner of Phoenix Legal which is a law firm.¹⁴ One of the unique feature of this bill that government can confiscate property of the offender who is absconded from India until he/she surrenders himself to the jurisdiction of the appropriate legal forum.

So unlike the PMLA which has a punitive effect, the Fugitive Economic Offenders Ordinance seeks to have a deterrent effect. An individual declared as a fugitive economic offender will have to submit to Indian jurisdiction to protect his assets. Moreover, the sweep of the ordinance is wide in the sense that it covers even overseas assets acquired from criminal activity.¹⁵

Some legal persons said that the fugitive economic offender ordinance will have retroactive effect. The ordinance highlights that the provisions of this Ordinance would apply to “any individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Ordinance”. So how about situations where actions have already been taken under PMLA (provisional attachment of assets under PMLA already done in Nirav Modi)? Can two laws be applied on the same offence? These is a point to ponder. So will the new Fugitive Economic Offenders ordinance help bring Vijay Mallya and Nirav Modi back to India to face criminal prosecution? This would be unlikely, as bringing people back to India, would depend much on the mutual legal assistance agreements/ extradition treaties and whether the Indian Government is keen to use them or not.¹⁶

¹³ Retrieved from- <https://www.thehindubusinessline.com/companies/fugitive-economic-offenders-ordinance-seeks-to-plug-loopholes-in-existing-laws/article23638797.ece> on 19/08/18.

¹⁴ Retrieved from- <https://www.thehindubusinessline.com/companies/fugitive-economic-offenders-ordinance-seeks-to-plug-loopholes-in-existing-laws/article23638797.ece> on 19/08/18.

¹⁵ ibid

¹⁶ ibid