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Elements and Advantages of Fugitive Economic Offenders Act, 2018

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ABSTRACT

The government of India passed the Fugitive Economic Offenders Act, 2018 safeguarding depositor's belief and the welfare of the country's financial system and helps in aiding the Government by provisioning an effective mechanism for confiscating and attaching the properties and proceeds of crime belonging to such fugitive economic offenders who are circumventing the Justice dispensation system. The Act aims to daunt fugitive economic offenders who sidestep judicial prosecutions in the country, thus, to protect the sanctitude of the rule of law and render them susceptible to Indian Jurisdiction. The cases of financial offences involved with levant of hefty bank loans, ergo exacerbating the economic condition of the financial transactions segment in India, it was perceived that the prevailing civil and criminal provisions in the law were insufficient to tackle the gravity of the issue. The paper aims to highlight the attributes and implementation of the fugitive economic offender's act. There are various occasions and history of economic offenders fleeing from Indian jurisdiction to avoid the litigation and to escape from the criminal liability forestalling the initiation of criminal proceedings or on occasion during the delay of the proceeding of such trials.

Keywords: Fugitive, Economic, Offender.

I. INTRODUCTION

It is increasingly becoming evident that the Large Size Economic Offences committed to public money are causing colossal damage to the planned operations of the country's financial institutions, thereby impacting the country's economy.

The Economic offences are primarily related to fraud, counterfeiting, money laundering, and tax evasion, non-repayment of hefty bank loans, etc. The economic offences can be simply understood as crimes related to committing fraud in chit funds, forgery by cheques, cheating or misleading by financial institutes, forging and swindling of money or money equivalents. Corruption is also a part of economic offences. The economic offence is also known as a

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Financial Offence. The reason why it is referred to as Financial Offence is that the criminal offence is linking to money and its equivalence which sequentially deals with a country's inflation and disturbs the economically weaker people, resulting in the destitution line continuously escalating. Economic offences terminally reduce the overall Gross Domestic Product (GDP) of the country, which drives the state in a situation to take loans and borrow money during a financial crisis from another country which creates international liability upon the country.

White-Collar convicts are the key examples of Economic offenders. Many famous Indian business personalities like Ketan Parekh, Vijay Malaya, Harshad Mehta, and Nirav Modi are all shamed as Economic Offenders for having committed large-scale money-laundering, tax evasion, and fraud on creditors. Currently, India has numerous laws that include provisions to penalize such offenders. These include the Extradition Act, 1962 and The Securities and Exchange Board of India, 1992 which was enacted after the scams accomplished by Hiten Dalal and Harshad Mehta. The Prevention of Money-Laundering Act (PMLA), 2002 which forbids money-laundering, while The Benami Properties Transactions Act, 1988 prohibits Benami transactions, and The Companies Act, 2013 punishes fraud and unauthorized acknowledgement of deposits. Other laws such as the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 also contain economic crimes, such as counterfeit and deception. But the economic offenders had easily escaped abroad for eluding the process of law in India by residing outside the jurisdiction of Indian courts. The Ministry of External Affairs in the Government of India had recently stated that over 30 businessmen, under investigation by the CBI and the Enforcement Directorate, had absconded to elude facing trial in front of Indian courts.

It was also lucidly understood that the standing civil and criminal laws do not possess sufficient provisions to successfully deal with such offenders and procedures under these laws are laborious and incapacitates the inquiry with the offender on the run. Hence, the Government of India introduced this Fugitive Economic Offenders Act to provide measures to deter such economic offenders escape from the clutches of rule of law by fleeing to other countries under the guise of personal liberty. Initially, the ordinance was promulgated on 31st July 2018, and later the Fugitive Economic Offenders Act was passed by the Parliament on July 19, 2018, in Lok Sabha and on July 25, 2018, in Rajya Sabha². The provisions of this Act shall apply to any

² Team PRS Legislative Research, The Fugitive Economic Offenders Bill, 2018, PRSLEGISLATIVE RESEARCH, (last visited 28.04.2021, 10:24 IST), <http://www.prsindia.org/billtrack/fugitive-economic-offenders-bill-2018>.

individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Act.

II. KEY FEATURES OF THE ACT

The Act helps to spot those economic offenders who conspire to thwart criminal proceedings against them by removing them from India and refusing to come back to India to participate in the Court proceedings. The Act defines such a 'Fugitive Economic Offender' as someone against whom a warrant has been issued by the special court regarding a scheduled Offence has been issued by any Court in India, who has left India to avoid criminal prosecution; or being abroad, refuses to come back to India to face criminal prosecution³.

“Scheduled Offence” suggests that an offence per the Schedule if the overall price concerned in such offence or offences is 100 large integer rupees or additional. This Act covers fifty-five forms of economic offences given beneath the Schedule appended to the Act. These scheduled Offences square measure already known as an offence beneath another Act however come back beneath the scope of this Act once the alleged wrongdoer has conspired to go away from India to avoid any legal action or being abroad, refuses to come back to India to face legal action.

The main distinction between the surrender Act, 1962 and Fugitive Economic Offenders Act, 2018 is that the latter deals with distinguishing and finding these offenders whereas the surrender act deals with the comeback and surrender of fugitive offenders⁴.

To declare someone a Fugitive Economic wrongdoer and invoked with the opposite provisions of this legislative act, firstly, that person should be alleged of getting committed any one of the fifty-five scheduled offences involving a cash price of a hundred crores or additional and against that a warrant conjointly has been by any Court in India. Secondly, the investigation Officer will then apply to the "Special Court" which implies a Court of Session selected as a Special Court beneath sub-section (1) of section forty-three of the Money-laundering Act, 2002 (15 of 2003) for declaring the aforesaid person as a Fugitive Economic wrongdoer. Finally, such a Special Court can issue a notice to the alleged Fugitive Economic wrongdoer, requiring him to look once a minimum of six weeks and if he seems, the proceedings initiated against the person can terminate or if the person does not come back India and look before the Special Court, it will declare that person as "Fugitive Economic Offender" and confiscate all his properties as provisioned beneath section twelve of this Act. The term

³Cabinet approves Fugitive Economic Offenders Bill, 2018, PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA.

⁴<http://pib.nic.in/newsite/PrintRelease.aspx?relid=176920>. 6 Fugitive Economic Offender Act, 2018 (17 of 2018)

“person” really includes- “a person or Hindu undivided family (HUF) or an organization or a Trust or a Partnership or a liability company (LLP) or AN Association or any agency, workplace or branch in hand or controlled by any of the higher than legal entities”.

III. ADVANTAGES

On declaration of someone as a Fugitive Economic wrongdoer, The Special Court confiscates the alleged offender’s properties, Benami Properties, and alternative styles of issue of alleged economic crime and this differs from alternative laws, like CRPC, 1973, wherever arrogation is final 2 years once proclamation as a fugitive from justice. But, wherever once the proceedings, the Special Court finds that the individual is not a fugitive economic wrongdoer, the Special Court shall order the discharge of property or record hooked up or taken over beneath this Act to the person entitled to receive it. On a correct arrogation of the properties placed in Indian nation or abroad and/or the opposite issue of crime, the rights, and titles on the taken things can become vest with the central government. They become free from encumbrances like any charges or liens on the property⁵. The central government might then appoint an administrator to manage and lose these properties by mercantilism them to listen to the claims of creditors and subsidizing them.

Another fascinating feature of this Act is that any Court or court in the Indian nation, in any civil continuing before it, may, forbid such individual from insisting or defensive any civil claim, which can conjointly seem to violate Article twenty-one of the Constitution ⁶, the correct to live enshrined beneath Article twenty-one, that has been understood to incorporate the correct to access justice through this Act. once the Fugitive Economic wrongdoer is personal, the Act goes to an extent that it bars that individual even from defensive his alternative suits associated with his inheritance or married disputes.

The Act does not conjointly need the investigation Officers to get an exploration warrant or make sure of the presence of witnesses before an exploration. This differs from alternative laws, like the Code of Criminal Procedure (CRPC), 1973, that contains such safeguards. These safeguards defend against harassment and planting of proof.

IV. CONCLUSION

The Act in little question permits the govt. and its authorities to reply fleetly against those

⁵ Sekhri, Abhinav (August 2017). "Running Argument: The flaws in the draft Fugitive Economic Offenders Bill". *The Caravan*. Retrieved 1 April 2021.

⁶ Constitutional vision to access to Justice in India - Legal Articles in India, LEGAL ARTICLES IN INDIA, (May 3, 2018, 00:58), <http://www.legalservicesindia.com/law/article/937/10/Constitutional-vision-to-access-to-Justice-in-India>.

Economic Offenders acting fugitively to thwart the Court Proceedings against them. It authorizes an instantaneous arrogation of the offender's properties and the alternative issue received through the committal of such economic crimes and enlarges an original to the govt⁷. for a quicker liquidation of the offender's properties to settle out the claims of involved creditors. however, the Act lacks while not providing clarity on however the govt. can use the sale issue that paves for unsecured creditors and alternative stakeholders like workers of the offender's company W is also awaiting settlement of their unfinished salary/wage dues from the Fugitive Economic wrongdoer. The Act does not give any mechanism or basis for evaluating and prioritizing such alternative claims of unsecured creditors and alternative stakeholders.

⁷ Nair, Remya (25 July 2018). "Bill to help government bring back fugitive economic offenders gets Parliament's nod". Mint. Retrieved 12 July 2021.