A CRITICAL ANALYSIS OF FUGITIVE ECONOMIC OFFENDER ACT, 2018

By Neelesh Srivastava
From Faculty of Law, Galgotias University

Abstract
Economic offences relate to fraud, counterfeiting, money-laundering, and tax evasion, among others. Currently, various laws contain provisions to penalise such offences. These include: (i) the Prevention of Money-Laundering Act (PMLA), 2002 which prohibits money-laundering, (ii) the Benami Properties Transactions Act, 1988 which prohibits benami transactions, and (iii) the Companies Act, 2013 which punishes fraud and unlawful acceptance of deposits. Other laws such as the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 also cover economic offences, such as forgery and cheating.

In 2017, the Ministry of Finance released a draft Bill to address cases of high-value economic offenders fleeing the country to avoid prosecution.[1] It observed that a new legal framework was required as the current civil and criminal laws do not contain specific provisions to deal with such offenders.[2] The Ministry further stated that procedures under these laws are time-consuming, which obstructs investigation and impacts the financial health of banks.

Keywords: Economic offences, financial health

What led to passing of Act?
There has been rise in number of economic offenders fleeing the jurisdiction of Indian Courts. The Fugitive Economic Offender Bill was passed by Lok Sabha and Rajya Sabha and got president assent on 31th July 2018. This bill is an effective, expeditious and constitutional way to stop these offenders from running away. This bill deter people from running away and those who have already fled, they return out of fear of attachment of their properties. Unpaid debt huge burden to PSB as its increasing their NPA.

Consequences of Offenders before passing of this Act.
1. Hampers investigation in Criminal Cases
2. Precious times of Courts are wasted
3. Weakens faith of people in Government
4. Undermines rule of law within the country

Basis Of Act
United Nation Convention against the Corruption (Ratified by India in 2011): It provides for non–conviction based assets confiscation for corruption related cases.

Object Of the Act
An Act to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts, to preserve the sanctity of the rule of law in India and for matters connected therewith or incidental thereto.

Provisions which already exists to confiscate assets of the offender
1. Prevention of Money Laundering Act, 2002
2. SARBESFI Act, 2002
3. Insolvency and Bankruptcy Code, 2016
4. Recovery of Debts due to Banks and Financial Institution Act, 1993
5. Foreign Management Act, 1999
Who is a Fugitive Economic Offender: Section 2(f): A person against who arrest warrant has been issued in:
1. Respect of a schedule offence
2. Who has left India to face criminal prosecution
3. Refuses to return India to face criminal prosecution.

Only those cases where the total value involved in such offence is 100 crore rupees or more.

How will Act deal with the FEO?

1. Section 4: Application for declaration of fugitive economic offender and procedure therefor.—(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and manner as may be prescribed in the Special Court that such individual may be declared as a fugitive economic offender.

   (2) The application referred to in sub-section (1) shall contain— (a) reasons for the belief that an individual is a fugitive economic offender; (b) any information available as to the whereabouts of the fugitive economic offender; (c) a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought; (d) a list of properties or benami properties owned by the individual in India or abroad for which confiscation is sought; and (e) a list of persons who may have an interest in any of the properties listed under clauses (c) and (d).

(3) The Authorities appointed for the purposes of the Prevention of Money-laundering Act, 2002 (15 of 2003) shall be the Authorities for the purposes of this Act.

2. Section 5: Attachment of property.—(1) The Director or any other officer authorised by the Director, not below the rank of Deputy Director, may, with the permission of the Special Court, attach any property mentioned in the application under section 4 by an order in writing in such manner as may be prescribed. 4 (2) Notwithstanding anything contained in sub-section (1) or section 4, the Director or any other officer, not below the rank of Deputy Director, authorised by the Director, may, by an order in writing, at any time prior to the filing of the application under section 4, attach any property— (a) for which there is a reason to believe that the property is proceeds of crime, or is a property or benami property owned by an individual who is a fugitive economic offender; and (b) which is being or is likely to be dealt within a manner which may result in the property being unavailable for confiscation: Provided that the Director or any other officer who provisionally attaches any property under this sub-section shall, within a period of thirty days from the date of such attachment, file an application under section 4 before the Special Court. (3) The attachment of any property under this section shall continue for a period of one hundred and eighty days from the date of order of attachment or such other period as may be extended by the Special Court before the expiry of such period. (4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. Explanation.—For the purposes of this sub-section, the expression “person interested”, in relation to any immovable
property includes all persons claiming or entitled to claim any interest in the property.

3. **Section 10: Issue of Notice**—(1) Where an application under section 4 has been duly filed, the Special Court shall issue a notice to an individual who is alleged to be a fugitive economic offender. (2) The notice referred to in sub-section (1), shall also be issued to any other person who has any interest in the property mentioned in the application under sub-section (2) of section 4. (3) A notice under sub-section (1) shall— (a) require the individual to appear at a specified place and time not less than six weeks from the date of issue of such notice; and (b) state that failure to appear on the specified place and time shall result in a declaration of the individual as a fugitive economic offender and confiscation of property under this Act. (4) A notice under sub-section (1) shall be forwarded to such authority, as the Central Government may notify, for effecting service in a contracting State. (5) The authority referred to in sub-section (4) shall make efforts to serve the notice within a period of two weeks in such manner as may be prescribed. (6) A notice under sub-section (1) may also be served to the individual alleged to be a fugitive economic offender by electronic means to— (a) his electronic mail address submitted in connection with an application for allotment of Permanent Account Number under section 139A of the Income-tax Act, 1961 (43 of 1961); (b) his electronic mail address submitted in connection with an application for enrolment under section 3 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016); or (c) any other electronic account as may be prescribed, belonging to the individual which is accessed by him over the internet, subject to the satisfaction of the Special Court that such account has been recently accessed by the individual and constitutes a reasonable method for communication of the notice to the individual.

**Section 11: Termination of Proceedings**:
11. Procedure for hearing application.—(1) Where any individual to whom notice has been issued under sub-section (1) of section 10 appears in person at the place and time specified in the notice, the Special Court may terminate the proceedings under this Act. (2) Where any individual to whom notice has been issued under sub-section (1) of section 10 fails to appear at the place and time specified in the notice, but enters appearance through counsel, the Special Court may in its discretion give a period of one week to file a reply to the application under section 4. (3) Where any individual to whom notice has been issued under sub-section (1) of section 10 fails to enter appearance either in person or through counsel, and the Special Court is satisfied— (a) that service of notice has been effected on such party; or (b) that notice could not be served in spite of best efforts because such individual has evaded service of notice, it may, after recording reasons in writing, proceed to hear the application. (4) The Special Court may also give any person to whom notice has been issued under sub-section (2) of section 10 a period of one week to file a reply to the application under section 4.

**Section 12: Confiscation of Property**: (1) After hearing the application under section 4, if the Special Court is satisfied that an individual is a fugitive economic offender, it may, by an order, declare the individual as a fugitive economic offender for reasons to be recorded in writing.
(2) On a declaration under sub-section (1), the Special Court may order that any of the following properties stand confiscated to the Central Government— (a) the proceeds of crime in India or abroad, whether or not such property is owned by the fugitive economic offender; and (b) any other property or benami property in India or abroad, owned by the fugitive economic offender.

(3) The confiscation order of the Special Court shall, to the extent possible, identify the properties in India or abroad that constitute proceeds of crime which are to be confiscated and in case such properties cannot be identified, quantify the value of the proceeds of crime.

(4) The confiscation order of the Special Court shall separately list any other property owned by the fugitive economic offender in India which is to be confiscated.

(5) Where the Special Court has made an order for confiscation of any property under sub-section (2), and such property is in a contracting State, the Special Court may issue a letter of request to a Court or authority in the contracting State for execution of such order.

(6) Every letter of request to be transmitted to a contracting State under sub-section (5) shall be transmitted in such form and manner as the Central Government may, by notification, specify in this behalf.

(7) The Special Court may, while making the confiscation order, exempt from confiscation any property which is a proceed of crime in which any other person, other than the fugitive economic offender, has an interest if it is satisfied that such interest was acquired bona fide and without knowledge of the fact that the property was proceeds of crime.

(8) All the rights and title in the confiscated property shall, from the date of the confiscation order, vest in the Central Government, free from all encumbrances. (9) Where on the conclusion of the proceedings, the Special Court finds that the individual is not a fugitive economic offender, the Special Court shall order release of property or record attached or seized under this Act to the person entitled to receive it.

(10) Where an order releasing the property has been made by the Special Court under sub-section (9), the Director or any other officer authorised by him in this behalf may withhold the release of any such property or record for a period of ninety days from the date of receipt of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

Section 15: Appointment of Administrator:

(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (2) of section 12 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 12: Provided that the Central Government or the Administrator shall not dispose of any property for a period of ninety days from the date of the order under sub-section (2) of section 12.

Section 22: Application of other laws not barred.—The provisions of this Act shall be
in addition to and not in derogation of any other law for the time being in force.

**Probable problematic area in this Act**
1. Bar on defending civil claims (Sec. 14)
2. Sale of property without trial (Sec. 15)
3. Finding Buyer and disposal of properties
4. Detoration in the value of seized assets
5. Use of sale proceeds from confiscated property not specified
6. Confiscation of property situated outside India
7. Thresold of 100 Crore (Section 2(m)).

**Famous figurative Economic Offenders of India with money estimation they fled:**
1. **Nirav Modi & Mehul Chokshi**: Rs 12636 Crore: PNB frauds. Mehul Chokshi has been recently arrested in Dominica. The Caribbean Supreme Court restrained Dominican authorities from removing him from the Commonwealth of Dominica until a further hearing in the matter, scheduled on June 2, 2021.
3. **Deepak Talwar**: Rs. 1000 Crore: Alleged concealed Income. Currently in UAE.
4. **Sanjay Bhandari**: Rs 150 Crore: Charged with Tax Evasion, possession of defence Ministry documents. Whereabouts: unknown
5. **Lalit Modi**: Rs 125 Crore: Charged with siphoning off funds from BCCI. Currently in London.

**Comparison of current laws with the Bill**

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<th>Provisio n</th>
<th>The Fugitive Economic Offenders Bill, 2018</th>
<th>Current Laws</th>
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<tbody>
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<td>Absconding</td>
<td>A person may be declared an FEO if he leaves the country and refuses to return to face prosecution. He may be asked to appear at a specified place at least six weeks after notice.</td>
<td>CrPC: Section 82 allows a Court to issue a proclamation requiring a person evading a warrant to appear at a specified time and place at least 30 days after notice.</td>
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<td>Attachment</td>
<td>A person’s property may be attached for 180 days. Attached properties may include those believed to be proceeds of crime and benami properties.</td>
<td>CrPC: Section 83 allows properties of absconders to be attached.</td>
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<td>Confiscation or recovery</td>
<td>An FEO’s property may be confiscated and vested in the central government, free of encumbrances. The central government may dispose this property only after 90 days.</td>
<td>CrPC: Section 85 allows attached property to be sold by the state government after six months. It will have to return the property or proceeds if the absconder returns within</td>
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<td><strong>Search and seizure</strong></td>
<td><strong>CrPC</strong>: Under Section 100, authorities may conduct a search. The search will have to be conducted in the presence of two witnesses, upon issuance of a search warrant. Provisions related to search under CrPC followed in other laws such as: (i) the PMLA, (ii) the Securities and Exchange Board of India Act, 1992, (iii) the Central Excise Act, 1944, (iv) the Companies Act, 2013, and (v) the Central Goods and Services Tax Act, 2017. PMLA: While searching a person, if he so requires, authorities may take him to a gazetted officer or a Magistrate, within 24 hours.</td>
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<tr>
<td>The Special Court may exempt certain properties from confiscation where any other person has a genuine interest.</td>
<td>While searching a person, if the person requires, authorities may take him to a gazetted officer or a Magistrate, within 24 hours.</td>
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<td>The Special Court may request a court or authority in a contracting state</td>
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<td>Authorities may search premises and persons on the belief that a person may be an FEO, or has proceeds of crime, among others. They may also seize documents.</td>
<td>CrPC: Under Chapter VIIA, courts may request contracting</td>
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state (countries with whom an agreement has been signed to enforce provisions of the law) to execute its confiscation order.

states to execute their orders (where central government has entered into agreements with such countries).

PMLA: Provisions under Chapter IX similar to CrPC.

Extradition Act, 1962: Chapter IV allows for the extradition of an offender (accused or convicted) from a foreign country.

3. Signed extradition treaties with 48 countries

**Conclusion & Suggestions**

Reach out to different countries for sovereign arrangement and extradition treaties to enforce provision under the act.

Recheck the provision which are ambiguous, violates of the fundamental rights.

**References:**


**Extradition Of Figurative:**

1. Cannot force the offender to return, more dependent on extraditions process.

2. Extradition in India is governed by the Indian Extradition Act, 1962.


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