

Targeting Economic Offenders

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The Fugitive Offender Bill
2018



...the Bill will help the Central Government recover the properties of those high net worth individuals who have fled from the country to avoid prosecution and other legal proceedings after committing economic frauds. The Exchequer will be bolstered after recovery from the sale proceeds

The present economic scenario worldwide is volatile. Coupled with this, our country has thrown open our doors to globalisation, hence the tremors are felt here too. Earlier, our country was, to an extent, cushioned from the tumult that rocked economies the world over. After liberalisation we too felt the ripples. Indian businesses have grown, they have spread their wings all over the world and to fund their expansion many have gone to the banks for capital. The erstwhile conservative banks too have given loans to their clients in good faith in expectation of growth. Unfortunately they are now feeling the pinch in many ways.

The government felt that despite the existence of the Indian Penal Code, Prevention of Corruption Act and Prevention of Money Laundering Act, a specific act targeting economic offenders is the need of the hour. Hence, the government announced in the Budget that a specific law targeting fugitive economic offenders was soon to be brought about which would give government powers to seize properties and appropriate the sale proceeds toward the loan creditors. After Punjab National Bank was hit by the fraud the Union Cabinet immediately approved the Bill to deliver a death knell on financial fraudsters and to further boost the confidence of the investors and bank customers in the banking system.

Rationale and Preamble

Due to business deals going awry, and inability of the customers to service their loans in time the banking sector has been impacted. Many of these defaulting fraudsters flee the country when they see the writing on the wall. Rather than face the music, these high network, big spending businessmen cleverly leave the Indian shores anticipating punitive action before the law enforcing authorities and regulators get after them. The sums of money owed by them, the debts, non payment of overheads may run in to crores of rupees. The country's banks, the investigating agencies, the prosecuting agencies all have been taken for a ride by these unscrupulous people who have stashed away their ill gotten wealth in various entities abroad, various assets and bank accounts and who live a merry life of luxury in the comfort of foreign shores away from our country's jurisdiction. The existing civil and criminal provisions of law are not entirely adequate to deal with these severe problems that have a critical impact on the economy.

The legal mechanism of extradition is a tedious and long drawn out process that takes years. The government, in the fitness of things, thought to address the loopholes and lacunae in the present laws and lay down clear cut and stringent measures to deal with these economic offenders who flee the country and are, in effect, fugitives from the law. Unless such

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tough and stringent measures are taken by confiscation of their ill gotten accumulated assets these absconders will go scot free. Further, this legislation will prove to be a deterrent to those contemplating to take steps to flee to some other country and abscond after committing economic white collar crimes. Non conviction based asset confiscation for corruption related cases is enabled under provisions of the United Nations Convention. This Bill deals specifically with economic offenders who are fugitives from the law of the land and have escaped before the commencement or during the course of proceedings before criminal and civil courts.

The Fugitive Economic Offenders Bill 2018 was introduced in the Lok Sabha on 12th March, 2018. The preamble of the Bill clearly says “*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.*”

The Bill

This Bill brings under purview those cases where the total value of the economic offences is Rs.100 crores or more. This bill is expected to re-establish the rule of law with respect to absconding fugitive economic offenders who will be forced to return to India and face trial for their offences. The Bill allows for attachment of the properties of the fugitive economic offender. This will go a long way to help banks and other financial institutions to achieve recovery from the absconding defaulters.

The Bill proposes to give relief to the alleged offender if in case he returns to India prior to declaring him as a fugitive economic offender and if he submits to the appropriate jurisdictional court proceedings under the Act then proceedings under this Act would cease.

The Bill has been well thought out and etched with necessary safeguards

Stringent action against corruption & black money

01 Special Investigation Team set up at the First Cabinet Meeting after the present Government assumed office

02 Demonetisation led to India's highest ever unearthing of suspicious transactions and deposits. The current proportion of High Denomination notes in our economy is much less than what it would have been without Demonetisation

03 Double Taxation Avoidance Agreement with Mauritius, Cyprus and Singapore

04 Agreement on real time information sharing with Switzerland

05 Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 enacted

06 PMLA amended to allow confiscation of property equivalent in value of black money stashed abroad



07 Benami Property Act blocking a major avenue for generation and holding of black money in various forms

08 Action taken against around 3 lakh shell companies

09 Fugitive Economic Offenders Bill introduced to empower law enforcement agencies to confiscate the assets of economic absconders. This would also help the banks and other financial institutions to achieve higher recovery from fugitive economic offenders

by providing hearing through counsel, allowing him time to file a reply, serving notice of summons whether in India or abroad and appeal to High Court have been appropriately provided. Provision has been made for appointment of an Administrator to manage and dispose off the property in compliance with the provisions of law. This Bill is cogent with the earlier acts like Prevention of Money Laundering Act, Evidence Act, IPC etc.

Definition of Fugitive Economic Offender

Fugitive Economic Offender means:

“any individual against whom a warrant of arrest in relation to a Scheduled Offence has been issued by any court in India who i) has left India so as to avoid criminal prosecution; or

ii) being abroad, refuses to return to India to face criminal prosecution.”

Implementation

The Director means the Director appointed under the Prevention of Money Laundering Act 2002 u/s 49(1). Deputy Director means the Deputy Director appointed under the Prevention of Money Laundering Act 2002 u/s 49 (1).

The Director or Deputy Director so appointed has to file an application before a Special Court designated under the PMLA 2002 to declare a person as a fugitive economic offender. The Application made should contain:

- i. the reasons to believe that an individual is a fugitive economic offender
- ii. any information of his whereabouts

- iii. list of properties believed to be proceeds of a crime for which confiscation is sought
- iv. list of benami properties or foreign properties for which confiscation is sought and
- v. a list of persons having interest in these properties. (i.e. all such persons claiming or entitled to claim any interest in the property)

On receipt of this application with all the details, the **special court will issue a Notice** (u/s 10 of the Bill) to the individual requiring him to appear at a specified place and time not less than six weeks from date of issue of the notice and state that failure to appear on the specified place and time shall result in the **Declaration of the individual as a fugitive economic offender** and confiscation of the property under this act. If the individual appears before the special court at the specified place and time, then the court will terminate its proceedings under the provisions of this Bill.

Attachment/Confiscation of Property

The Director /Deputy Director may attach any property mentioned in the application with the permission granted from the Special Court by an order in Writing.

Provisional Attachment

Notwithstanding the application in writing the Director/ Deputy Director authorised by the Director may, at any time, prior to filing the application under Section 4 attach any property provisionally for which there is reason to believe the property is the proceeds of crime or is property owned by an individual who is a fugitive economic offender and which is being or likely to be dealt in a manner which may result in the property being unavailable for confiscation. - Provided that the Director or any other officer who provisionally attaches the property files an application before the Special Court within 30 days of such attachment. The attachment shall continue for 180 days unless extended by the Special Court.

Cabinet Decision
March 01, 2018

Fugitive Economic Offenders Bill, 2018



Salient features of the Bill-

- i. Application before the Special Court for a declaration that an individual is a fugitive economic offender;
- ii. Attachment of the property of a fugitive economic offender;
- iii. Issue of a notice by the Special Court to the individual alleged to be a fugitive economic offender;
- iv. Confiscation of the property of an individual declared as a fugitive economic offender resulting from the proceeds of crime;
- v. Confiscation of other property belonging to such offender in India and abroad, including benami property;
- vi. Disentitlement of the fugitive economic offender from defending any civil claim; and
- vii. An Administrator will be appointed to manage and dispose of the confiscated property under the Act.

The Bill clearly states that nothing in this section shall prevent the person interested in the enjoyment of the immoveable property attached from such enjoyment. At the conclusion of the proceedings if the person is not found to be a fugitive economic offender, his properties will be released.

Powers of the Director

The Director or any other officer authorised by him will have the powers vested in a Civil Court. He can, on the basis of material in his possession and has reason to believe (the reasons of such belief must be recorded in writing) that an individual may be a fugitive economic offender, he may enter any place within the limits of the area assigned to him or in respect of which he is authorised by any other authority who has jurisdiction of the area.

On entering any such place he may request the proprietor, employee or any other person who may be present there at that time to afford him necessary facility to inspect the records, afford him necessary facility to check or verify the proceeds of crime or any transaction related thereto and request them to furnish necessary information which may be relevant to the proceedings.

The Director or other authorised officer acting under this section may place marks of identification on the records inspected, make or cause to be made extracts or copies therefrom;

make an inventory of property checked or verified by him and record any statement of any person present at the property.

Declaration as Fugitive Economic Offender

After hearing the application the Special Court may declare an individual as a fugitive economic offender. It may confiscate his properties which are proceeds of crime/benami properties in India or abroad or any other property in India or abroad. Upon confiscation all rights and titles of the property will vest in the Central government free from all encumbrances.

Administrator

Under Section 15 of the Act the Central Government may appoint as many of its officers (not below the rank of Joint Secretary to the Government of India) to perform the functions of an Administrator. The Administrator so appointed shall receive and manage the property in relation to which the order has been made. He shall take such measures as the Central Government may direct to dispose of the property vested in the Central Government. Provided that the Central Government or administrator shall not dispose of any property for a period of 90 days from date of order.

Appeal

An appeal against the order of the Special Court shall lie before the High

Court. The Appeal must be preferred within a period of 30 days from date of judgement. The High Court may entertain an appeal after the expiry of the said 30 days if they are satisfied that the appellant had sufficient cause for not preferring the appeal within the due date. No appeal shall be entertained by the High Court after the expiry of 90 days from date of judgement.

Conclusion

It is hoped that the Bill will help the Central Government recover the properties of those high net worth individuals who have fled from the country to avoid prosecution and other legal proceedings after committing economic frauds. The Exchequer will be bolstered after recovery from the sale proceeds. It is also expected to act as a deterrent to those who are contemplating or who are in the brink of committing economic offences and evading law. □

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Cabinet approves construction of a new 6 - Lane bridge across River Ganga at Phaphamau, Allahabad

The Cabinet Committee on Economic Affairs, chaired by the Prime Minister approved the project for construction of 9.9 km long new 6 - lane bridge across river Ganga on NH - 96 at Phaphamau in Allahabad with total capital cost of Rs. 1948.25 crore.

The construction period for the project is three years and likely to be completed by December, 2021. The new bridge will resolve the traffic congestion on existing old 2 - lane Phaphamau bridge on NH-96 at Allahabad.

The new bridge will also facilitate the large congregation of people at Allahabad during Kumbh, Ardh-Kumbh and other yearly ritual baths at SANGAM in Prayag. This will give a boost to pilgrimage tourism and local economy of Prayag.

This new 6 - lane bridge will also be beneficial for the Lucknow/ Faizabad bound traffic coming from Madhya Pradesh via National Highway - 27 and National Highway - 76 through Naini Bridge.

In addition, this project of new bridge will generate direct employment during construction for about 9.20 lakh mandays.

It will also decongest the old bridge and will also ensure fast and safe movement for traffic.

It may be noted that there were only 13 bridges on river Ganges between Allahabad to Farakka before May' 2014. After 2014, additional 20 bridges were planned, out of which five have been opened to traffic and seven are under construction on the above stretch, thus bringing the total number of bridges to 33. Out of balance 8 bridges, which are planned for construction, work on Farakka, Sahebganj and Mokarnah is likely to start very soon. The present Phaphamau bridge would be therefore the 29th Bridge on river Ganges between Allahabad and Farakka.

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