

THE FUGATIVE ECONOMIC OFFENDERS BILL, 2017

The Economic offender's bill, 2017 is there to provide for measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, thereby preserving the sanctity of the rule of law in India.

The absence of such offenders from Indian courts has several consequences stating

1. Firstly, it hampers investigation in criminal cases;
2. Secondly, it wastes precious time of courts of law,
3. Thirdly, it undermines the rule of law in India.

4. Lastly, several such cases of economic offences involve non-repayment of bank loans thereby causing strain on the banking sector in India.

This bill gives powers to the Government to confiscate property of economic offenders and defaulters.

It is a huge step towards achieving the commitments laid down in the United Nations Convention against Corruption (UNCAC). India had ratified the said Convention in 2011. The UNCAC is a comprehensive anti-corruption convention that includes wide range of corruption offences and aims at garnering international co-operation in criminalizing offences of corruption.

The Bill has been motivated by the debate surrounding prevention of corruption and the recovery of assets or proceeds of corruption. Reminiscent is the case of Nirav Modi's Rs.11,000 crores fraud with PNB Bank, following Vijay Mallya's companies' arrears amounting 9,000 crore rupees owed to public sector banks.

This Bill is a first of its kind which seeks to allow the Financial Intelligence Unit, under the aegis of the Finance Ministry, to file an application for the declaration of fugitive economic offenders for confiscation of their assets.

OVERVIEW OF THE PROVISIONS

The Bill defines a FUGITIVE ECONOMIC OFFENDER as any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India, who

- (i) leaves or has left India so as to avoid criminal prosecution; or
- (ii) refuses to return to India to face criminal prosecution.

The Schedule to the said Bill provides a list of economic offences under inter-alia the Indian Penal Code, 1860, the Prevention of Corruption Act, 1988 and the Insolvency and Bankruptcy Code, 2016. Additionally, the proposed legislation only applies if the total value involved in such offences is 100 crores rupees or more.

Where the same applies, the Director (as specified in the Bill), may file an application following the procedure enumerated under section 6 to the Special Court for a declaration that an individual is a fugitive economic offender.

Preservation of Property

The Director has been provided with wide powers under section 7 to preserve the property by way of attachment even before filing the application under section 6, which may continue for 180 days.

Special Court

Upon declaration of an individual as a fugitive economic offender, the Special Court may order the Central Government to confiscate:

- (a) any of the properties being proceeds of crime, whether or not such property is owned by the fugitive economic offender;
- (b) any other property in India, owned by the fugitive economic offender.

A notice will:—

- (a) Require the individual to appear at a specified place at a specified time not less than six weeks from the date of notice; and
- (b) State that failure to appear on the specified place and time will result in a declaration of the individual

as a fugitive economic offender and confiscation of property under this Act.

The authority must serve the notice within a period of two weeks including through electronic service. A notice may also be served to the individual alleged to be a fugitive economic offender by electronic means accordingly:

(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;

(b) His electronic mail address submitted in connection with an application for enrolment under Section 3 of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;

(c) Any other account as may be prescribed, belonging to the individual which is accessed by him over the Internet, provided it is shown to the satisfaction of the Special Court that the account has been recently used by the individual and constitutes a reasonable method for communication of the notice to the individual.

Declaration of Fugitive Economic Offender

(1) After hearing the application, if the Special Court concludes that an individual is a **fugitive economic offender**, it may declare the individual a fugitive economic offender for reasons recorded in writing.

(2) On a declaration the Special Court may order that any of the following properties stand confiscated to the Central Government:—

- (a) proceeds of crime, whether or not such property is owned by the fugitive economic offender;
- (b) Any other property in India, owned by the fugitive economic offender.

(3) The confiscation order of the Special Court will, to the extent possible, identify the property that constitutes 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 will separately list any other property owned by the fugitive economic offender in India which is to be confiscated.

(5) 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, provided it is shown that such interest was acquired without knowledge of the fact that the property was a proceed of crime.

(6) From the date of the confiscation order, all the rights and title in the confiscated property will vest in the Central Government, free from all encumbrances.

DISPOSAL OF CONFISCATED PROPERTIES

Under Section 13, the

(1) The administrator (who will be appointed) will be responsible for the disposal of the confiscated property.

(2) The administrator will hear the claims in relation to the confiscated property, in the manner as may be prescribed, and prepare a final list of creditors.

(3) The confiscated property will be used to satisfy the claims of the creditors in the final list.

(4) In cases where any confiscated property is the subject matter of proceedings under the Insolvency and Bankruptcy Code, 2016, the administrator will follow the priority prescribed under the said Code for the satisfaction of claims under this section.

(5) In cases where any confiscated property is the subject matter of proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the administrator will follow the priority prescribed under the said Acts for the satisfaction of claims under it.

Appeal

If any individual aggrieved by an order under Section 10 may file an appeal to the High Court within 30 days from the date of the order.

[Powers of authorities](#)

The powers of the Director and Deputy Director under this Act are in addition to those conferred by the Prevention of Money Laundering Act, 2002.

[LAW Ministry Suggestion](#)

It wants Saving Clause to be incorporated in the Bill before it is introduced in Parliament. Saving clause provides for certain exception(s) in a statute. It enables repealed law to be in force with respect to some existing rights as provisions of the proposed bill has bearing on the provisions of the proposed bill has bearing on the provisions of existing laws.

The need of this new law has arisen because when once the accused flees, it hampers investigation in criminal cases; it leads to wastage of precious time of courts of law and undermines the rule of law in India. This kind of conduct has also damaged the banking sector and the existing civil and criminal provisions were not proving to be adequate in dealing with the severity of the problem.

[SCHEDULE](#)

[Section Description of Offence](#)

[Offences under the Indian Penal Code, 1860](#)

Sec.120B-- read with any offence in this Schedule Criminal conspiracy

Sec.255-- Counterfeiting Government stamp

Sec.257 ---Making or selling instrument for counterfeiting Government stamp

Sec.258 ---Sale of counterfeit Government stamp

Sec.259 ---Having possession of counterfeit Government stamp

Sec.260 ---Using as genuine a Government stamp known to be counterfeit

Sec.417 ---Punishment for cheating

Sec. 418 ---Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect

Sec.420 ---Cheating and dishonestly inducing delivery of property.

Sec. 421 ---Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Sec.422 ---Dishonestly or fraudulently preventing debt being available for creditors

Sec.423 ---Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

Sec. 424 ---Dishonest or fraudulent removal or concealment of property

Sec.467 ---Forgery of valuable security, Will, etc.

Sec.471 ---Using as genuine a forged document or electronic record.

Sec. 472 and 473---Making or possessing counterfeit seal, etc., with intent to commit forgery.

Sec.475 and 476 ---Counterfeiting device or mark.

Sec.481 ---Using a false property mark.

Sec.482 ---Punishment for using a false property mark.

Sec.483 ---Counterfeiting a property mark used by another.

Sec. 484 Counterfeiting a mark used by a public servant.

Sec.485 ---Making or possession of any instrument for counterfeiting a property mark.

Sec.486 ---Selling goods marked with a counterfeit property mark.

Sec.487--- Making a false mark upon any receptacle containing goods.

Sec.488 ---Punishment for making use of any such false mark.

Sec.89A ---Counterfeiting currency notes or bank notes

Sec.489B ---Using as genuine, forged or counterfeit currency notes of bank notes.

[Offences under the Prevention of Corruption Act, 1988](#)

Sec.7 ---Public servant taking gratification other than legal remuneration in respect of an official act.

Sec. 8 ---Taking gratification in order, by corrupt or illegal means, to influence public servant.

Sec.9 ---Taking gratification for exercise of personal influence with public servant.

Sec.10 ---Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.

Sec.13 ---Criminal misconduct by a public servant.

[Offences under the Securities and Exchange Board of India Act, 1992](#)

Sec.12A read with section 24 --- Prohibition of manipulative and deceptive devices, insider trading and substantial

Sec. 24 ---Acquisition of securities or control.

[Offences under the Customs Act, 1962](#)

Sec.135--- Evasion of duty or prohibitions.

Offences under the Companies Act, 2013

Sec.74--- Non-repayment of deposits

Sec.76A --- Punishment for Contravention of Section 73 or Section 76.

Sec.206 (4)--- 2nd proviso Carrying on business of a company for a fraudulent or unlawful purpose.

Sec.213 (b) --- proviso Carrying on business of a company with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose.

Sec.447 --- Punishments for Fraud.

Sec.452 ---Punishment for withholding of property.

Offence under the Limited Liability Partnership Act, 2008

Sec.30 (2) ---Carrying on business with intent or purpose to defraud creditors of the LLP or any other person or for any other fraudulent purpose.

Offence under the Insolvency & Bankruptcy Code, 2016

Sec. 69 ---Punishment for transactions defrauding creditors

Kindly go to the link for the amendment <http://www.ibbi.gov.in/180404.pdf>

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