



LEGALEAGLE
LAW FORUM

LEGALEAGLE
LAW FORUM

Review Document

The Fugitive Economic Offenders Act, 2018

Author- Ms. Pooja Mandotar

THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018

Introduction:

The President on 31-07-2018 gave his assent to the Fugitive Economic Offenders Act, 2018¹, to give measures to stop criminal monetary wrongdoers from evading the process of law in India by staying outside the jurisdiction of Indian courts, to save the sacredness of the standard of law in India and for issues associated therewith or coincidental thereto. In India, even as harsh legislation to punish fugitive economic offenders takes shape, people blamed for extortion and financial offenses are holed up abroad as indicated to the ministry of external affairs. These individuals, sought after by the Enforcement Directorate and Central Bureau of Investigation (CBI) in 15 unique cases, collectively owe Rs 40,000 crore to banks and public institutions in India.

The list of fugitive offenders includes names like:

- 1. Vijay Mallya** - Extended his alcohol business by beginning a career, he utilized both United Breweries just as United Spirits Ltd to purchase misfortune making Deccan Air and consolidated it with Kingfisher Airlines. To subsidize the aircraft, he sold United Engineering. He acquired cash from numerous banks to supposedly subsidize Kingfisher Airlines however redirected the cash to purchase properties and groups over the world. At the point when the banks were after him, he turned into a Rajya Sabha member. The banks quit pursuing him. He promised the Kingfisher brand and obtained further cash. At the point when Kingfisher Airlines was a colossal misfortune making organization, IDBI loaned it Rs. 900 crores. His assistance assessment of travellers, PF, Income Tax of Employees, yet didn't submit to the PF or IT specialists. Again in 2010, he turned into a Rajya Sabha member as an autonomous competitor upheld by JDS and Congress for two reasons: to be sheltered from requests and to get a strategic visa. At the point when the new government began pursuing defaulters for tidying up the banks, he got frightened and ran off from India, utilizing the political identification. Presently he will not come back to India while owing ₹ 9,000 crores to a gathering of banks.

¹https://www.indiacode.nic.in/handle/123456789/4035?view_type=browse&sam_handle=123456789/1362

2. NiravModi - His wife Ami Modi, sibling NeeshalModi and Uncle MehulChoksi, named in the ₹ 12,636 crore misrepresentation at Punjab National Bank. He supposedly procured false letters of undertaking from one of its branches for abroad credit from other Indian lenders. PNB has suspended 10 officials over the Rs 11,400 crores trick and alluded the issue to CBI for examination. It was found through SWIFT path that one 'junior level' branch official unauthorized and falsely gave Letter of Undertakings (LoUs) in the interest of certain organizations having a place with NiravModi Group for profiting purchasers credit from abroad parts of Indian banks. None of the exchanges were directed through the CBS framework, accordingly evading the early location of fake action. As per media reports, NiravModi's family left the nation on January 1 weeks before the CBI got a grumbling from PNB on January 29.

Other Fugitive Offenders:

1. Jatin Mehta of Winsome Diamonds, who owes ₹ 7,000 crores;
2. Former Indian Premier League chief LalitModi, accused of siphoning off ₹ 125 crores from the country's cricket board;
3. Sterling Biotech Ltd. directors ChetanJayantilalSandesara and Nitin JayantilalSandesara for alleged bank fraud of ₹ 5,000 crores.
4. Ashish Jobanputra, promoter of Mumbai-based textile export firm ABC CotspinPvt. Ltd, and his wife in a bill discounting scam of ₹770 crore and for causing losses to banks;
5. Diamond trader Ritesh Jain for illegally taking ₹ 1,500 crores out of the country;
6. Surender Singh, Angad Singh and Harsahib Singh for cheating and criminal conspiracy;
7. Sabhya Seth for fraud of ₹ 390 crores against Oriental Bank of Commerce;
8. Sanjay Bhandari for alleged tax evasion of ₹ 150 crores.
9. Nilesh Parekh of Shree Ganesh Jewellery House, accused of a ₹ 2,223 crore bank fraud, was arrested by CBI last year after he returned to India to join the probe.

Significances of the act:

1. A fugitive economic offender has been defined as a person against whom an arrest warrant has been issued for committing an offence listed in the schedule, and the value of the offence is at least Rs 100 crore. Further the person has:

- (i) Left the country to avoid facing prosecution, or
 - (ii) Refuses to return to India to face prosecution.
2. A Director or Deputy Director (appointed under the Prevention of Money-Laundering Act, 2002) may file an application before a special court (designated under the 2002 Act) to declare a person as a fugitive economic offender. The application will contain:
 - (i) the reasons to believe that an individual is a fugitive economic offender,
 - (ii) Any information about his whereabouts,
 - (iii) A list of properties believed to be proceeds of a crime for which confiscation is sought,
 - (iv) A list of benami properties or foreign properties for which confiscation is sought, and
 - (v) A list of persons having an interest in these properties.
3. After hearing the application, the special court may declare an individual as a fugitive economic offender. It may confiscate properties which:
 - (i) Are proceeds of crime.
 - (ii) Are benami properties in India or abroad, and
 - (iii) 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 (such as any charges on the property). The central government will appoint an administrator to manage and dispose of these properties.
4. The Bill/Ordinance authorises any civil court or tribunal to disallow a person, who has been declared a fugitive economic offender, from filing or defending any civil claim. Further, any company or limited liability partnership where such a person is a majority shareholder, promoter, or a key managerial person, May also be barred from filing or defending civil claims.
5. The Director and other officers will have the same powers as are vested in a civil court under Code of Civil Procedure. These powers include: (i) entering a place on the belief that an individual is a fugitive economic offender, and (ii) directing that a building/persons be searched, or documents be seized.

Important provisions:

1. The Act characterizes outlaw fugitive economic offenders. It sets out that an individual would be qualified to become a FEO, only when an arrest warrant has been given to the offenses as referenced in the act against the person. He needs to additionally fulfill by the accompanying to be declared as a FEO such as, to avoid criminal prosecution, the aforementioned individual has left India; or he is declining to come back to India to confront the criminal prosecution.
2. Section 2(m), the FEO must have committed a fraud or a crime whose worth must be over a 100 crores to be booked under the act of 2018.
3. Section 4 of the act, when the Director or the Deputy Director believes reasonably that an individual has to be declared as an FEO due to certain materials in his possession, he may make an application before the Special Court to declare that individual to be the same.
4. Section 5 provides for provisional attachment of any property which has been enlisted in the application for declaration as an FEO under section 4 with the permission of the Special Court before which the application has been filed.
5. Section 11 provides the procedure for hearing of the application filed under Section 4. On the notice provided under section 10, the alleged offender presents itself before the authorities, the proceedings under this act would be stopped. Whereas, if he fails to present himself within the stipulated time of 6 weeks, he shall be declared as an FEO.
6. Section 12 provides the effect of declaration of a person as Fugitive Economic Offender in sub-section 2. The effect of declaration of an individual as an FEO would result in the confiscation of the proceeds of crime from any property, in India or abroad, whether or not the property is owned by the FEO, as well as any other property including any benami property owned by the FEO.
7. Section 14, further provides for disallowing the individual who has been declared as an FEO to put forward or file any civil claims by any court or tribunal established in India. A company and a Limited Liability Partnership has also been disallowed from filing a civil claim if "individual filing the claim on behalf of the company or the limited liability partnership, or any promoter or key managerial personnel or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as a fugitive economic offender." The

properties which are reallocated on the request for the Special Court are dealt with by an administrator who is selected by the Central Government.

8. Section 16 states that parties on whom the burden of proof lies. To prove that the individual is an FEO or the property is the result of the proceeds of crime would be on the Director or the person so authorised by the Director under section 4 of the act of 2018. The provision of the act also allows for an appeal to be filed from any order or judgment of the Special Court within a period of 30 days by virtue of section 17 of the act. A bar on the jurisdiction of the civil courts has been imposed on the matters in which the Special Court has jurisdiction.
9. section 19, no action can be taken against the Central Government, the Presiding Officer of the Central Government or the Director or Deputy Director for an action taken by them under this act in good faith.



Process of Declaration:

The application for declaration of fugitive economic offender ought to contain:

- a) Purposes behind the conviction that an individual is a fugitive economic offender;
- b) Information accessible on the whereabouts of such a person;
- c) List of properties or estimation of properties accepted to be proceeds of crime;
- d) List of properties in India for which confiscation is sought; and
- e) List of people who may have an interest in any of these properties

Loopholes:

1. Pre-preliminary confiscation of property, it includes a presentation from a special court, it is important that the entire process of statement and confiscation can happen without the guilty party being attempted and sentenced for anything. This isn't only a connection of property, where the CBI or the ED seize properties while carrying out investigations so that the accused can't sell off things involved in a crime. Seizure implies that the Central government has the privilege to sell the properties, even those mutually possessed by others who are not FEOs. Most worryingly, the 'offender' can't guarantee it back if eventually acquitted.

2. Disallowing civil claims, Courts and tribunals across the nation have the ability to disentitle anybody announced as a FEO from filing or defending any civil case – regardless of whether that case has nothing to do with their supposed financial offense. This implies they can't record cases, state, for breaches of agreement against them and they can't defend themselves on the off chance that another person records a common argument against them, for example for defamation or nuisance, which would mean they would naturally lose those cases.
3. The Act additionally says that if any representative, promoter, key managerial personnel, majority shareholder or owner of a controlling interest in an organization or LLP is announced a FEO, at that point the organization or LLP can't record or defend cases either. Once more, this can be the case regardless of whether the organization has nothing to do with whatever offense the fugitive is alleged to have committed.

Conclusion:

The Fugitive Economic Offenders Act has been enacted to facilitate the functioning of the Prevention of Money Laundering Act, 2002. The Act aims on constraining economic offenders to come back to India to face trial for offenses committed. It is likewise expected to help the banks and other monetary foundations to accomplish higher recuperation from money related defaults submitted by such fugitive economic offenders. The procedures initiated under the previous will reach a conclusion when the economic offender submits himself before the jurisdiction of the Indian Courts. The act encourages the recuperation of contribution from the economic offender's parties by investigative agencies to confiscate and sell the properties. The Prevention of Money Laundering Act likewise accommodates corresponding arrangements and agreements with foreign nations to bring back these absconders. The essential misfortune behind the previously existing law is that the same is very cumbersome and slow. Accordingly, the recovery is postponed and banks are left with Non-Performing Assets for quite a long time. Though, with the authorization of the 2018 act, the same process has been expedited.

About the Author



My name is Pooja Mandotar and I am studying Bishop Cotton Women's Christian Law College, Bengaluru. My experience at LEGALEAGLE LAW FORUM, internship was for 4 weeks, which started with a zoom call to explain us regarding the research to be accomplished. After which I was given a set of 6 Bare Acts Title which was supposed to be completed by me. It was a great learning opportunity for me. The research work has made me to accept more in my composing aptitudes and has acquired a lot of certainty in me concerning my capacities to think and efficiently put it down in writing. I would like to thank the Organization for giving out an opportunity like this, especially during a pandemic situation, and a special thanks to the mentors for being so cooperative with me and clearing the doubts in a short span of time.