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The Fugitive Economic Offenders Act and its relation to the growing scope of Economic Crime

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ABSTRACT

The commission of an economic offense requires the presence of an individual of professional capacity that provides for the opportunity to commit said crime in the first place. This means the offender is educated and capable of escaping the crime either by delaying the deliverance of justice or by moving beyond the jurisdiction from which it can operate. In absence of the primary accused, legal proceedings grind to a halt, leaving behind countless victims and the gross mis delivery of justice. To combat this, and to specifically allow for trials to occur without the presence of the accused, the Fugitive Economic Offenders Act was enacted. However, the Act is not a perfect solution and brings forth its own slew of cascading problems. There is need for proper understanding of the scope of economic offenses, as well as the specific act involved in handling fugitive offenders. The paper discusses the need for, as well the problems and solutions that arise from the result of the act.

KEYWORDS

*Fugitive, Absconder, Jurisdiction, Punishment,
Economic Offense*

FUGITIVE ECONOMIC OFFENDERS ACT

Economic offenses are a bane of civilised society. They impact all sections of society and cause a level of damage that takes a humongous amount of time for the economy to recover, if the

damage isn't permanent. However, the response to the crime of this level is not proportionate, but rather non-existent. Offenders of these types of heinous crimes rarely face justice, and if they are punished, it is done so in a manner that feels like a slap on the wrist. Moreover, the persons accused in these types of crimes generally abscond themselves, notably to a foreign country. The jurisdictional reach of law enforcement in India, in relation to international or cross border trial and arrests is rather limited or ineffective. To combat this, the Fugitive Economic Offenders Act (FEO Act), 2018 was enacted¹. The act focuses solely on those absconding individuals, who flee India with the hopes of avoiding the jurisdiction of the courts with deters the trial processes and other law enforcement efforts. This act allows the authorities to confiscate and attach properties and assets of an absconder waiting trial till he returns within the jurisdiction of the law.

The FEO Act was introduced because existing civil and criminal laws were deemed inadequate to handle offenders who absconded, which hampered investigations and undermined the rule of law. High-profile individuals like Vijay Mallya, Nirav Modi, and Mehul Choksi have been declared FEOs under this Act, leading to the attachment and transfer of significant assets to public sector banks.

The Act covers a broad range of scheduled offences, primarily economic in nature, including but not limited to²:

- Offences under the Prevention of Corruption Act, 1988
- Money laundering under the PMLA, 2002
- Fraud and cheating under the Indian Penal Code (IPC), 1860
- Financial irregularities under the Companies Act, 2013
- Customs and taxation offences under the Customs Act, 1962
- Securities and Exchange Board of India (SEBI) Act, 1992
- Dishonour of cheques, forgery, and criminal breach of trust

In the 2010s, India saw a number of significant financial scandals involving economic criminals who left the nation to avoid being investigated and prosecuted. Notable instances include Nirav Modi and Mehul Choksi, who are connected to the Punjab National Bank (PNB) fraud involving more than ₹13,000 crore, and Vijay Mallya, who is accused of defaulting on loans surpassing ₹9,000 crore.

¹ <https://www.scconline.com/blog/post/2018/08/02/the-fugitive-economic-offenders-act-2018-highlights/>.

² The Fugitive Economic Offenders Act, 2018.

Prior to 2018, laws like the Criminal Procedure Code (CrPC), 1973, and the Prevention of Money Laundering Act (PMLA), 2002, were insufficient to deal with absconders who remained outside of Indian jurisdiction. The government realized that in order to prevent criminals from escaping and to facilitate the prompt recovery of assets both inside and outside of India, a particular legislative procedure was required³.

OBJECTIVES OF THE ACT

The Fugitive Economic Offenders Act, 2018 (FEOA) was designed with the following key objectives:

- To deter economic offenders from evading the legal process by remaining outside India.
- To confiscate properties and assets of such offenders, including those held through benami or third-party ownership.
- To ensure that such persons are deprived of the proceeds of crime.
- To expedite the judicial process and protect the integrity of the financial system.

ECONOMIC CRIME – AN INTRODUCTION

Economic crimes are those types of crimes that are done with the intention of financial gain. They are generally done by those residing in the upper stratum of society and have more easy access and opportunity to commit the act. The entire motive in this type of crime is financial gain and not any other personal reasons. The victims of this type of crime is not a particular individual or person but rather the entire society as a whole and the burden of the loss is shared by all. In other words, it is an illegal act done by a person or a group of persons with the intent of monetary gain or professional advantage. It also colloquially known as financial crime or socio-economic crime.

"A crime committed by a person of high social status and respectability in the course of his occupation" is how Sutherland defined white collar crimes. Crimes perpetrated by companies and other legal entities are also included in this definition. Because these powerful criminals could get away with anything in the past, he wanted to ensure that justice was done regardless of one's social standing. This expanded the scope of preexisting theories about crime and put many traditional notions to the test.

³ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=176920>.

In stark contrast to normal crime or blue-collar crime (crimes committed by working class members of society and other physical or violent crimes), the damage caused by white collar crime is quite immense. Since the damage caused is somewhat unseen it quite often accumulates to a much larger level before being revealed. In India after independence, the transition from a war time economy to a normal functioning economy was quite turbulent. This unstable period was a perfect breeding ground for criminal minds in various industries to flourish. This led to major scams in various parts of the world, from industrial and business scams, to financial scams and even crime committed in the education and employment sectors. The criminal code at that time was ill equipped to combat this type of emerging crime. So various acts were made to combat this, and eventually the fugitive economic offenders act was passed with the specific purpose of pursuing those offenders who have escaped the jurisdiction of the courts ⁴by illegally leaving the country and residing in another, generally a safe haven country. These types of legislations are necessary to defend against rising number of crimes occurring in the country, and the evolving nature of said crimes. Simply relying on preexisting laws is no longer a viable action plan as these have plenty of loopholes and exceptions that the criminals have learnt throughout these years. Moreover, the evolving nature of the crime demands a specific set of laws to counter them and as well as punish them.

MAJOR TYPES OF ECONOMIC OFFENSES

Economic offenses come in various types and forms, since they are usually committed by well-educated persons with opportunity to commit them in the first place. They are always well planned and seek to exploit an overlooked part of the system of operation function in front of them. This means that economic crimes can occur in sector of the economy at any scale, no amount of profit is considered too small or too large. If the opportunity presents itself there is a possibility that someone might take it. The first major type of economic crimes are the ones traditionally committed throughout history such as smuggling, the second type are emerging crimes which utilise technology and other cutting-edge creations to commit crime, and third is the commission of trans boundary crimes in the form of money laundering. There is also another form of economic crime becoming more prevalent nowadays due to various worldwide conflicts, dodging sanctions, by using shell companies or different offshore branches of the same company to do trade with a sanctioned country and avoid the negative effects. These combination of offenses are damaging not only to the individual states and citizens, but also to the unity

⁴ Pragnesh Desai vs Union of India & Anr (2004) ILR 1 Del 95.

and the integrity of the entire world as a whole.

Some major types of economic crimes are as follows:

- Fraud: Fraud or cheating is intentionally cheating or dishonestly inducing or manipulating a person to commit an act or an omission of act that causes harm or even to part them of their property. There must be intentional deception for the act to be considered as fraud and must be distinguishable from genuine mistake or accident.
- Money Laundering⁵: Money laundering is the unlawful act of concealing the origins of money obtained through illegal origins, making it seem legitimate. There are three main stages involved, placement, layering and integration after which the origin of the money is no longer certain and can be used freely. Without cause for worry. Money laundering is considered harmful as the illegal funds are obtained through criminal means and they remain untaxed, losing government revenue
- Tax Evasion: Tax evasion is the illegal and intentional act of a person or an organisation, failing to pay taxes owed to the government. It involves deliberately misleading or misrepresenting or concealing financial information to reduce or eliminate tax liability and is completely criminal in nature, as opposed to legal means of tax reduction and tax avoidance
- Corruption: Corruption is considered as the abuse of entrusted power for financial or personal gain. In India corruption is not used as a general term, but it encompasses various acts which are specific in nature and classifies them as criminal cases of corruption. It is generally done by a public servant who is responsible for things, but can be applicable to a private employee as well.
- Insider Trading: Insider trading refers to the unlawful act of purchasing or selling a company's securities while having access to confidential, non-public information that could affect the company's stock price, providing the trader with an unfair edge over other investors. It is considered a criminal activity in many nations, including India, and is closely monitored by regulatory bodies such as the Securities and Exchange Board of India (SEBI). Insider trading is not always prohibited. Insiders, such as executives or employees, are allowed to purchase or sell shares in their own company as long as they follow the disclosure guidelines established by the regulatory body and avoid using any UPSI (Unpublished Price Sensitive Information) in their transactions.

⁵ J.Sekar and Ors. vs Union of India and Ors, 2018, CrlJi 720.

- Cyber Crime: cyber-crime is any illegal behaviour involving a computer, networked device, or network itself is referred to as cybercrime. Although there isn't a single, uniform legal definition that applies to all jurisdictions, it generally refers to criminal activity in which a computer is either the tool used to conduct the crime (e.g., online fraud, identity theft) or the target of the crime (e.g., hacking, data breaches). Cybercrime presents serious dangers to people, companies, and even national security, including operational, psychological, and financial harm. These risks have increased due to the quick development of technology, making it a widespread and expensive worldwide issue.
- Ponzi or Pyramid schemes: A pyramid scheme is an illegal and unsustainable business model that primarily generates revenue by recruiting new participants rather than by the sale of genuine products or services to the public.

KEY ASPECTS OF THE ACT

The act seeks justice by ensuring that even if the accused has left the country, they can be tried as any other person in the country will be. This is mandatory as the banks and other financial institutions of the country act as its lifeblood. To start prosecution against a specific person under this act, the director or the deputy director of the bank in question, must approach a special court and apply to designate someone as an economic offender. When the special court receives this application it sends a notice to the appellant requesting them to make their presence at a certain place and at a specific point of time, and if they fail to do so they are then labelled as a fugitive economic offender. The time limit for this notice is generally six weeks. The proceedings will also be stopped if the fugitive in question appears in the specified spot.

If the Director files an application with the court within 30 days, they can either attach the property listed in the application on a Special Court order or attach it provisionally without Special Court approval. At the end of the case, your property will be returned if you are found not guilty. After considering the case, the Special Court has the authority to declare an individual a fugitive economic offender and issue a notice of seizure. Illicit gains, benami properties both domestically and abroad, and any other property are examples of such properties. The Bill allows any civil court or tribunal to prohibit someone who has been identified as a fugitive from defending its provisions before the trial, preventing the fugitive economic offender from doing so.

WHY DO OFFENDERS FLEE COUNTRY, AND HOW ARE THEY SAFE?

The question of why this occurrence is come common that it requires an act, can be easily arrived by analysing the facts, that surround the circumstances after they flee the country.

- **Lack of Immediate Extradition Treaties or Delays in Execution:** India does have serval extradition treaties with other countries but the legal wok surrounding and the normal processes takes a significant amount of time that it becomes inevitably delayed.
- **Fast Entry and Visa Loopholes:** Some countries quick entry visa requirements and a residential visa may be easily obtained by investing in or baying existing businesses or property ownership. This acts a means of cover and a shield for these offenders.
- **Favourable Business and Banking Environments:** Tax free economic or more business friendly countries act a perfect hub for these criminals to prosper. They can easily launder and move the money without raising any red flags.
- **Poor Cross-Border Law Enforcement Coordination:** There is a lack of coordination and communication between the countries and the technological gaps may be vas depending on the countries involved. Moreover, the bureaucratic processes involved hinder the speed at which the information is shared and acted upon allowing the criminals to be wary.

FLAWS OF THE ACT

Although the act is generally deemed completely necessary, it can be argued that it has some elements that may considered detrimental to the law or society. These shortcomings cannot be ignored as they hold considerable weight in their respective fields.

- May violate fundamental rights⁶: The accused is barred from filing a civil case under any court, if the person in question has considerable authority over an organisation, then the entire association form filing or reporting any civil case. This can be seen as violative of article 21 of the Indian constitution as it denies them their right to life and individual opportunity guaranteed to them by the law of the land. Any case irrelevant of its connection to the matter at hand, cannot be tried or heard by the accused under the act. This means they lose their right or all civil remedies guaranteed to them by law and this provision may be maliciously used by third parties⁷.

⁶ The State Trading Corporation of India Ltd. and Ors. vs. The Commercial Tax Officer, Vishakhapatnam, AIR 1963 SC 1811.

⁷ Anita Kushwaha vs. Pushap Sudan, (2016) 8 SCC 509.

- The money from the proceeds may be misused: The act provides that the properties of the accused may be seized and vested in the central government free of any encumbrances, and may even be sold in 90 days. The question of it is sold to and for how much value cannot be asked as the government is not liable to answer to any party. Moreover, there may be parties involved in the properties and may lose their representation or their entire property. They may not even be criminally liable, yet they may potentially lose money due to their association to the economic offender. Other laws provide proper pathway to use of funds.⁸
- Authority may turn draconian in nature: The authorities may target an individual without any valid reason for concern, or for other malicious reasons such as political or personal. This cannot be prevented as the act explicitly allows for the authorities to act without any impunity. They need no warrant from any court or any witness testimony to target a particular individual. There are certain provisions in other laws such as the code of criminal procedure or rather the Bharitya Nyaya Suraksha Sanhita, which allows for some safeguards, such as warrants for search of premises, as well as the presence of witnesses during searches.

CONCLUSION

All factors considered, there is a clear and distinct need for the law to exist and proper implementation is what needs to be taken into consideration. Misuse of the law for personal and political gain is currently the concern of the highest degree. From a certain perspective, the laws may suit all the criteria required for them to be considered draconian in nature, and this is quite true in several instances where it was misused for placing coercive influence on a party for political or economic game. Regardless, the ideal version of the law is truly required for the current socioeconomic state of society.

⁸ Section 178, Insolvency and Bankruptcy Code, 2016.