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**INITIATIVES TO CURVE THE MENACE OF**  
**FUGITIVE ECONOMIC OFFENDERS IN**  
**INDIA: AN ANALYSIS OF THE FUGITIVE**  
**ECONOMIC OFFENDERS ACT, 2018**

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**Initiatives To Curve The Menace Of Fugitive Economic  
Offenders In India: An Analysis Of The Fugitive Economic  
Offenders Act, 2018**

**Abstract**

*The economic offenders abscond from India to defy the legal processes and thus seriously undermine the rule of law in India. The banks and the government become dead beat trying to prosecute willful defaulters of large loans and accused persons of money laundering as they continue to evade legal process by residing out of India. After the escape of the Lalit Modi, Vijay Malya and recently Nirav Modi and Mehul Choksi emerged a wave of thinking that how to curb such offenders because such offenders not only inflict pecuniary losses on individuals but also damage the national economy and have security implications as well and further by fleeing from the prosecution proceedings they also defy the rule of law'. Finally, the Government has introduced Fugitive Economic Offenders Act, 2018 to deal with such type of offenders. This is an Act that provides 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.<sup>1</sup> The Fugitive Economic Offenders Act, 2018, gives powers to the government to confiscate property of economic offenders and defaulters who flee. The Act is expected to re-establish the rule of law as the accused will be forced to return to India and face trial for his offences. In this research article researcher have tried to study the salient features of the Fugitive Economic Offenders Act 2018, and how this Act is helpful in preserving the rule of law in India.*

**Keywords:** Economic Offenders, Fugitive Economic Offenders and Rule of Law.

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<sup>1</sup> Dr Shashi Bhushan and Dr Jai Mala, The Fugitive Economic Offenders Act, 2018: An Overview, available at: [https://www.researchgate.net/publication/361665689\\_THE\\_FUGITIVE\\_VE\\_ECONOMIC\\_OFFENDERS\\_ACT\\_2018\\_AN\\_OVERVIEW](https://www.researchgate.net/publication/361665689_THE_FUGITIVE_VE_ECONOMIC_OFFENDERS_ACT_2018_AN_OVERVIEW)

## I. Introduction

An economic offence is a socially harmful violation of regulations on economic or financial operations which has caused or may have caused graver consequences and which is defined as an offence under the law of land. Economic offences not only inflict pecuniary losses on individuals but also damage the national economy and have security implications as well. The offences of smuggling of narcotic substances, counterfeiting of currency and valuable securities, financial scams, frauds, money laundering and *hawala* transactions etc. evoke serious concern about their impact on the national security.<sup>2</sup>

Local police deals with considerable number of economic offences falling under the broad category of 'cheating', 'counterfeiting' and 'criminal breach of trust'. A number of special laws regulating customs, excise, taxes, foreign exchange, narcotic drugs, banking, insurance, trade and commerce relating to export and import have been enacted in the country. These laws are enforced by the respective departmental enforcement agencies created under the statutory provisions. Legal powers for investigation, adjudication, imposition of fines, penalties, and arrest and detention of persons under special circumstances are derived from the same legislations.<sup>3</sup> The legal definition of a fugitive is "an individual who, after having committed a criminal offence, leaves the jurisdiction of the court where such crime has taken place or hides within such jurisdiction to escape prosecution".<sup>4</sup> In the recent trends it has been noticed that the suspects and accused of the economic offences and scams in order to evade that process of legal proceedings flee from India and continue to live luxury life in spite of being offender of pecuniary losses to society at large. Such economic offenders are generally termed as 'fugitive economic offenders'.

## II. Need Of Special Law For Fugitive Economic Offenders

The need of the special law to curb the problem of fugitive economic offenders has been well described in the objective to the Fugitive Economic Offenders Act, 2018. There have been several instances of economic offenders fleeing the jurisdiction of Indian courts, anticipating the commencement, or during the pendency, of criminal proceedings. The absence of such offenders from Indian courts has several deleterious consequences first, it hampers investigation in criminal cases; second, it wastes precious time of courts of law, third, it undermines the rule of law in India. Further, several such cases of economic offences involve non repayment of bank loans thereby causing strain on

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<sup>2</sup> National Crime Records Bureau Ministry of Home Affairs Government of India, *Crime in India, 2014 Compendium*, available at: <http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%209.pdf>

<sup>3</sup> *Ibid.*

<sup>4</sup> Surjit S. Bhalla, *Is Lali Modi a Fugitive?*, THE INDIAN EXPRESS, June 27, 2015, available at: <http://indianexpress.com/article/opinion/columns/is-lalit-modi-a-fugitive/>

## 1. Inefficiency Of Present Laws In India

The existing civil and criminal law in the country including the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) that used to recover assets of financial institutions without the involvement of courts, Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) under which a debt may be recovered on the issue of a recovery certificate by the Debt Recovery Tribunal, the Prevention of Money Laundering Act, 2002 (PMLA Act), the RBI Master Circular on Wilful Defaulters that has given deterrent measures like expelling a promoter from raising institutional finance for floating a new venture for five years, and Insolvency and Bankruptcy Code, 2016 (IBC) under which a debtor or the creditor can trigger the insolvency resolution process on default involving a restructuring of the debts and if the plan fails, the liquidation/bankruptcy process is triggered, provides several loopholes when applied to high-value economic offenders. This can be illustrated through the instance of liquor baron Vijay Mallya, who under pressure from banks to repay thousands of crores of debt owed by his collapsed Kingfisher Airlines, left India despite a 'look out circular' against him at the country's exit and entry points. The circular was issued at the request of the Central Bureau of Investigation after the agency registered an FIR against Mallya, Kingfisher Airlines and others.<sup>6</sup> Industrialist Vijay Mallya left the country the very day the banks, to which he owed over nine thousand crore rupees, moved the Debt Recovery Tribunal (DRT).<sup>7</sup> The apex court observed that court cannot analyse it in his (Mallya) absence. Court hold central government that it has to produce him before court and only when you will produce him here, we will then proceed. "As and when you will produce him before us, we will go ahead and will see what is to be done," the bench told the Attorney General.<sup>8</sup> Thus despite of several legislations when a person escapes the limits of Indian courts there seems some special legislation to deal particularly with such cases.

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<sup>5</sup> *Explanatory Note to the Draft Fugitive Economic Offenders Bill*, available at: [http://dea.gov.in/sites/default/files/Final\\_Explanatory\\_Note%20on%20the%20Draft%20Bill.pdf](http://dea.gov.in/sites/default/files/Final_Explanatory_Note%20on%20the%20Draft%20Bill.pdf)

<sup>6</sup> **Abhishek Sharan and Kalyan Subramani**, *Vijay Mallya Left Country In Spite of Look-Out Notice Against Him by CBI*, HINDUSTAN TIMES, March 10, 2016, available at: <http://www.hindustantimes.com/india/vijay-mallya-left-country-despite-look-out-notice-against-him-by-cbi/story-VYC6JpQwGfru5m5p2tI6L.html>

<sup>7</sup> Krishnadas Rajagopal, *Mallya left India on March 2, Government tells Court*, THE HINDU, Sep. 8, 2016, available at: <http://www.thehindu.com/news/national/vijay-mallya-has-left-india-centre-informs-sc/article8331337.ece>

<sup>8</sup> PTI, *Vijay Mallya Case: Will Proceed Against Businessman Only in His Presence, Says Supreme Court to Centre*, FINANCIAL EXPRESS, July 14, 2017, available at: <http://www.financialexpress.com/industry/vijay-mallya-case-will-proceed-against-businessman-only-in-his-presence-says-supreme-court-to-centre/763587/>

## **2. Problems Relating To Extradition Of Such Offenders**

Extradition may be briefly described as the surrender of an alleged or convicted criminal by one State to another. More precisely, extradition may be defined as the process by which one State upon the request of another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State.<sup>9</sup>

Soon after charged with offences, Vijay Mallya fled to the United Kingdom. India kept requesting The United Kingdom for Vijay Mallya's extradition, but all in vein.<sup>10</sup> India has had a history of facing problems in extraditing fugitives from the United Kingdom. It has a list of about 60 people that India wants extradited which includes Vijay Mallya and the Former IPL mastermind, Lalit Modi, who is charged with the evasion of Indian Law has also found refuge in the United Kingdom and has not been extradited as yet.<sup>11</sup>

'*Aut dedere aut judicare*' in Latin means- 'either extradite or prosecute'. It puts a legal obligation on States to prosecute a person guilty of committing a crime where no other state has requested for his/her extradition. This obligation does not limit itself to territorial crimes, it applies to extra-territorial crimes and is binding on criminals or victims of alien nationality as well. The States have also agreed to cooperate amongst them and with the competent International Tribunal to stop fugitives from escaping justice and to fight against the impunity granted against crimes whether they are offences of national or international concern.<sup>12</sup>

The law of extradition whether implemented through multilateral treaties or bilateral treaties, faces problems of enforcement. One major problem is that these treaties are binding only on the signatory states and hence there is no obligation to extradite a fugitive if a country is not signatory to an agreement. Further, even if they are signatories to the treaties for extradition, they cannot be forced to extradite criminals because there exists no system of sanctions imposed on countries not abiding by the law of extradition.<sup>13</sup> In such situations, the fugitives tend to believe that they can flee justice by going to a country which does not have an extradition treaty with the country in which the crime was committed. This encouragement can lead to evasion of justice on a massive scale, thus undermining the sole intention behind the formulation of extradition laws in the first place.<sup>14</sup>

Though the UK has offered India further assistance in the case asking the country to request extradition, it wouldn't be easy for India. Extradition from the UK is a too difficult a process and

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<sup>9</sup> *Extradition*, CENTRAL BUREAU OF INVESTIGATION, Oct. 04, 2017) available at: <http://cbi.nic.in/interpol/extradition.php>

<sup>10</sup> Tanushri More, *Loophoes in Extradition*, THE WORLD JOURNAL ON JURISTIC POLITY, March 2017, at 4, available at: <http://jurip.org/wp-content/uploads/2017/03/Tanu-shri-More.pdf>

<sup>11</sup> *Id.* at 5

<sup>12</sup> *Id.* at 5-6

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

Mallya can easily fight his case in the UK courts. If one goes by [reports](#), there are around more than one hundred extradition requests from India in the UK, which involves even wanted criminals. Chances are very little that India can make a convincing case for Mallya's extradition given that it doesn't have a foolproof case against him beyond loan default and alleged financial fraud. Legal experts point out several cases in the past where the Indian government has failed to bring back absconders and criminals.<sup>15</sup>

### III. Analysis Of The Fugitive Economic Offenders Act, 2018

#### 1. Meaning of 'Fugitive Economic Offender'

The term 'fugitive economic offender' has been defined under Fugitive Economic Offenders Act, 2018. According to the Act "any individual against whom a warrant for arrest in relation to a Scheduled Offence has been any Court in India, who has left India so as to avoid criminal prosecution; or be refuses to return to India to face criminal prosecution is fugitive economic offender".<sup>16</sup>

#### 2. Declaration of Offender as 'Fugitive Economic Offender' and 'Confiscation' of Property

The director<sup>17</sup> or any other officer not below the rank of deputy director<sup>18</sup> authorized by the director for the purpose may file an application in such form and manner as may be prescribed by the Special Court to declare individual as a fugitive economic offender. Fugitive economic offender is the person who has committed the 'Scheduled Offence of value involving rupees one hundred crore or more. Scheduled Offence means the offences mentioned in the Schedule of Fugitive Economic Offenders Act, 2018.<sup>19</sup>

The Act provides for confiscation of property of fugitive economic offenders. Director can attach the property of the offender with permission of the Special Court by an order. However, the Director or any officer authorized by the Director, may, by an order in writing, at any time prior to the filing of such application attach any property that is believed to be the proceeds of the crime or is

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<sup>15</sup> Dinesh Unnikrishnan and Ajay Singh, *India to push for Mallya's extradition: Why this is tougher for Modi Govt*, FIRSTPOST, May 12, 2016, available at: <http://www.firstpost.com/business/post-uk-refusal-india-to-push-for-mallyas-extradition-why-the-task-is-tougher-for-modi-govt-2775872.html>

<sup>16</sup> Fugitive Economic Offenders Act, 2018, Section 2(1)(f)

<sup>17</sup> Fugitive Economic Offenders Act, 2018, Section 2(1)(e) ["Director" means the Director appointed under sub-section (1) of section 49 of the Prevention of Money-laundering Act, 2002]

<sup>18</sup> Fugitive Economic Offenders Act, 2018, Section 2(1)(d) ["Director" means the Director appointed under sub-section (1) of section 49 of the Prevention of Money-laundering Act, 2002]

<sup>19</sup> Fugitive Economic Offenders Act, 2018, Section 2(1)(m) ["Scheduled Offence" means an offence specified in the Schedule, if the total value involved in such offence or offences is one hundred crore rupees or more.]

property owned by an individual who is a fugitive economic offender; and is being or is likely to be dealt with a manner which will result in the property being unavailable for confiscation, but such attachment of any property prior to application will continue for a period of 180 days from the date of the order of attachment.<sup>20</sup>

The application by director must contain the reasons for the belief that an individual is a fugitive economic offender. The application shall also contain any information available as to the whereabouts of the fugitive economic offender. The application shall be accompanied with certain lists i.e. a list of properties and the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought; a list of properties or benami property owned by the individual in India or abroad for which confiscation is sought; and, a list of persons who may have an interest in any of the properties listed and attached with application.<sup>21</sup>

After hearing the application under the Special Court is satisfied that an individual is a fugitive economic offender, it may declare the individual as a fugitive economic offender. On such declaration the Special Court may order that the proceeds of crime in India or abroad, whether or not such property is owned by the fugitive economic offender, any other property or *benami* property in India or abroad, owned by the fugitive economic offender shall stand confiscated to the Central Government.

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.<sup>22</sup>

### **3. Powers of Director and other officers**

#### **➤ Power of Discovery, Inspection and Enforcing the Attendance of any Person**

The Director or any other officer shall have the same powers of a civil court while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath, compelling the production of records, receiving evidence on affidavits, and issuing commissions for examination of witnesses and documents.<sup>23</sup>

#### **➤ Power of survey**

Where a Director or any other officer authorized by the Director, on the basis of material in his possession, has reason to believe that an individual may be a fugitive economic offender; he may enter any place within the limits of the area assigned to him. Before entering any such place he must record the reasons in writing. He may request any proprietor, employee or any other person who may be present at that time, to afford him the necessary facility to inspect such records as he may require and which may be available at such place and to check or verify the proceeds of crime or any transaction

<sup>20</sup> Fugitive Economic Offenders Act, 2018, Sections 4(1) and 5

<sup>21</sup> Fugitive Economic Offenders Act, 2018, Section 4(2)

<sup>22</sup> Fugitive Economic Offenders Act, 2018, Section 12

<sup>23</sup> Fugitive Economic Offenders Act, 2018, Section 6

related to proceeds of crime which may be found therein

The Director or any other officer may place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom, make an inventory of any property checked or verified by him; and record the statement of any person present at the property which may be useful for, or relevant to, any proceedings.<sup>24</sup>

➤ **Search and Seizure**

Where Director or any other officer not below the rank of Deputy Director authorized by him on the basis of information in his possession has reason to believe that a person may be declared as a fugitive economic offender; or, is in possession of any proceeds of crime; or, is in possession of any records which may relate to proceeds of crime; or, is in possession of any property related to proceeds of crime, then he may authorize any officer subordinate to him to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property; and
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act.<sup>25</sup>

➤ **Search of Persons**

An authority, authorized in this behalf by the Central Government by general or special order, has reason to believe that any person has secreted about his person or anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act. However if such person so requires, the authority shall take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate. The authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate. If such Officer or Magistrate sees no reasonable ground for search shall discharge such person otherwise shall direct that search be made. Before making the search the authority shall call upon two or more persons to attend and witness the search and the search shall be made in the presence of such persons. No

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<sup>24</sup> Fugitive Economic Offenders Act, 2018, Section 7

<sup>25</sup> Fugitive Economic Offenders Act, 2018, Section 8

female shall be searched by anyone except a female.<sup>26</sup>

#### 4. Notice

Where an application under section 4 has been filed, the Special Court shall issue a notice to an individual who is alleged to be a fugitive economic offender and any other person who has any interest in the property. The notice shall 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 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.<sup>27</sup>

#### 5. Procedure for Hearing Application

Where any individual to whom notice has been issued appears in person at the place and time specified in the notice, the Special Court may terminate the proceedings. If he fails to appear 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.<sup>28</sup>

#### 6. Appeal

An appeal shall lie from any judgment or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law. Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order appealed from provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days. However, no appeal shall be entertained after the expiry of period of ninety days.<sup>29</sup>

## IV. CONCLUSION

The Fugitive Economic Offenders Act is the government's response to the embarrassment of a string of large bank defaulters fleeing the country after duping them of several thousand crore of rupees. This legislation is a kind of blanket ban on economic offenders contesting the seizure and sale of their assets and properties without a trial in a court. According to information circulated in the news papers recently that Mehul Choksi is ready to return the money which is the result of this Act.<sup>30</sup> But Government should also take care that the fate of this Act should not be like other legislations which are already in existence such as Prevention of Money Laundering Act (PMLA) and the Foreign Exchange Regulation Act (FERA) which failed to stop Indian industrialists from stashing large amounts of wealth in tax havens abroad, but has been a great tool of harassment, blackmail and control by politicians and corrupt officials.<sup>31</sup>

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<sup>26</sup> Fugitive Economic Offenders Act, 2018, Section 9

<sup>27</sup> Fugitive Economic Offenders Act, 2018, Section 10

<sup>28</sup> Fugitive Economic Offenders Act, 2018, Section 11

<sup>29</sup> Fugitive Economic Offenders Act, 2018, Section 17

<sup>30</sup> *Supra* note 1

<sup>31</sup> *Ibid.*