



TOPIC OF THE WEEK

AUG'18 (29 to 04)

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Topic: Fugitive Economic Offenders Bill passed by Lok Sabha

The Lok Sabha on July 19, 2018 passed the Fugitive Economic Offenders Bill, which aims to deter fugitive economic offenders from evading the legal process by fleeing the country and remaining outside the jurisdiction of Indian courts.

The Bill aims to stop economic offenders who leave the country to avoid due process. Offences involving amounts of Rs 100 crore or more fall under the purview of this bill.

The legislation was passed through a voice vote after almost a two-hour long debate. The ruling government has been under attack from the opposition for failing to bring back defaulters like Vijay Mallya, Nirav Modi and Mehul Choksi.

The Bill will now be taken up in the upper house of the Parliament, Rajya Sabha.

History

India has witnessed several instances of economic offenders fleeing the country to avoid facing criminal proceedings such as industrialist Vijay Mallya and recently, billionaire jewellery designer Nirav Modi. Most of the cases involve non-repayment of bank loans, which is worsening the financial health of the banking sector in India. The existing civil and criminal provisions in the law are not entirely adequate to deal with the severity of the problem.

The Bill was first announced in Finance Minister Arun Jaitley's 2017 Budget speech.

About the Fugitive Economic Offenders Bill

A fugitive economic offender is any individual against whom a warrant for arrest in relation to a scheduled offence such as cheating, forgery or corruption has been issued by any court of India who, either leaves or has left India to avoid criminal prosecution or refuses to return to India to face criminal prosecution.

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The bill's implementation is expected to restore law and order, as the fugitive economic offenders would be forced to return to India to face trial for their offences.

The bill would also help the banks and other financial institutions to achieve higher recovery from financial defaults committed by such fugitive economic offenders and thus improving the financial health of such institutions.

Features of the Bill

- The bill provides for the creation of a 'Special Court' under the Prevention of Money-laundering Act, 2002 to declare a person as a Fugitive Economic Offender.
- The process of repatriation of an economic fugitive under the act begins with the submission of an application before the special court declaring that an individual is a fugitive economic offender.
- After going through the application, the special court would issue a notice to the individual alleged to be a fugitive economic offender.

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- This would be followed by confiscation of the individual's properties, located both in India and abroad including benami property, resulting from the proceeds of crime.
- The offender would be disentitled from defending any civil claim.
- If at any point during the course of the proceedings the alleged Fugitive Economic Offender returns to India and submits to the appropriate jurisdictional Court, proceedings under the proposed Act would come to an end.

Key Issues and Analysis

Under the Bill, an FEO's property may be confiscated and vested in the central government. The Bill allows the Special Court to exempt properties where certain persons may have an interest in such property (e.g., secured creditors). However, it does not specify whether the central government will share sale proceeds with any other claimants who do not have such an interest (e.g., unsecured creditors).

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The Bill does not require the authorities to obtain a search warrant or ensure the presence of witnesses before a search. This differs from other laws, such as the Code of Criminal Procedure (CrPC), 1973, which contain such safeguards. These safeguards protect against harassment and planting of evidence.

The Bill provides for confiscation of property upon a person being declared an FEO. This differs from other laws, such as CrPC, 1973, where confiscation is final two years after proclamation as absconder.

Conclusion

The government has been facing severe criticism from opposition parties for its failure to prevent economic fugitives from fleeing the country. When the bill becomes law, it will empower the centre to seize both local and overseas assets of alleged offenders, such as Vijay Mallya, Nirav Modi and Mehul Choksi, who chose not to return to India to face the law even after arrest warrants were issued.

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The bill will extend not only to loan defaulters and fraudsters, but also to individuals who violate laws governing taxes, black money, benami properties and financial corruption. However, most opposition parties criticized the Rs 100 crore threshold of the economic offenders bill, saying it would allow many other offenders to go scot-free.

Suggested Reading:

- ✓ <https://www.livemint.com/Politics/2oql6W2D1GFIOIKAZp8ZCM/Lok-Sabha-passes-fugitive-economic-offenders-bill.html>
- ✓ <https://www.thehindu.com/news/national/the-hindu-explains-the-fugitive-economic-offenders-bill-2017/article22908904.ece>
- ✓ <http://www.prsindia.org/billtrack/the-fugitive-economic-offenders-ordinance-2018-5233/>