

Nabbing absconders: on Fugitive Economic Offenders Ordinance

HEAT ON ECONOMIC ABSCONDERS	
<p>■ Bill name: Fugitive Economic Offenders Bill</p> <p>■ Purpose: Catch alleged absconders. Nirav Modi, his uncle Mehul Choksi have been charged of defrauding PNB and leaving the country. Also Vijay Mallya</p> <p>■ What will govt do: Try to put bill before Parliament as early as second part of budget session starting next month</p>	 <p>Bill highlights</p> <p>■ ED to start proceedings in special court by first issuing notice to 'fugitive economic offender'</p> <p>■ If offender appears in six weeks, notice will be terminated</p> <p>■ Prosecution starts if he chooses to stay away from country and sends counsel</p>

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, most such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India. The existing civil and criminal provisions in law are not entirely adequate to deal with the severity of the problem.

Context:

Union Cabinet approved the promulgation of Fugitive Economic Offenders Ordinance, 2018. This will empower the Government to seize the domestic assets of those deemed by a Court to be Fugitive Economic Offenders.

Who is a Fugitive?

- A fugitive is defined as someone who has left India to avoid criminal prosecution or who is already overseas and refuses to return to face the law.
- In case of an Fugitive Economic Offender, these are people who have defaulted on loans and have fled the country.
- While presenting Budget 2017-18, the Finance Minister referred to instances of offenders fleeing the country to escape its justice system, and said the government was looking at a law to confiscate the assets of such persons till they return to face the law.

Recent Cases

- There remains great disquiet over liquor baron Vijay Mallya's flight from the country, with his now-defunct Kingfisher Airlines having run up outstanding loans of over ₹9,000 crore from Indian banks.

- Both Mr. Mallya and former Indian Premier League commissioner Lalit Modi, who faces an Enforcement Directorate probe for foreign exchange law violations, are in Britain.
- Diamond Merchants Nirav Modi, Mehul Choksi and their associates firms defrauded the country's second largest public sector bank of over ₹12,800 crore.
- India is no closer to getting Mr. Modi or Mr. Mallya back to face the law, with extradition proceedings against the latter crawling through U.K. courts.
- Government agencies have attached the diamond merchant duo's assets in India, while an American court has disallowed the sale of their assets in other jurisdictions while allowing their U.S.-based entity to offload its assets.

The reason: India is yet to pass a model law mooted by the UN for cross-border insolvency cases.

Step by government to avoid Fugitive offenders:

- In September, the Finance and Law Ministries had agreed on a draft Bill, but it was only introduced in the Lok Sabha this March, in a session that proved to be a washout.
- The government is no doubt conscious of the clamour for tough action on absconding offenders, particularly those involved in financial misdemeanours and wilful defaulters of bank loans.
- Banks have been asked to mandatorily collect passport details of those borrowing above ₹50 crore, and the passports of some wilful defaulters are being impounded too.

THE FUGITIVE ECONOMIC OFFENDERS ORDINANCE

- A 'Special Court' would be set up under the Prevention of Money-Laundering Act, 2002 to declare a person a Fugitive Economic Offender.
- So as to ensure that the Court is not over-burdened, only those cases, where the total value involved is Rs. 100 Cr or more will be within the purview of the Ordinance.
- The Ordinance also removes the offenders' right to defend a civil claim in the Country.
- The Ordinance provides for the appointment of an Administrator to manage and dispose of the confiscated property.
- At any point of time during proceedings, if the Fugitive Economic Offender returns to India and submits to the appropriate Jurisdictional Court, proceedings under the Act would cease by the law.

FUGITIVE ECONOMIC OFFENDERS AND RECENT DEVELOPMENTS

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Way forward:

It is necessary to provide an **effective, expeditious and constitutionally** permissible deterrent to ensure that such actions are curbed.

It may be mentioned that the non-conviction-based asset confiscation for corruption-related cases is enabled under provisions of United Nations Convention against Corruption (ratified by India in 2011). The Bill adopts this principle. The ordinance is expected to re-establish the rule of law with respect to the fugitive economic offenders as they would be forced to return to India to face trial for scheduled offences.

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

The government may have opted for the ordinance route to deflect the heat from these cases of fraud, but it needs to present a coherent vision about its plans to bring back those fugitives who have already got away and plug the remaining loopholes in the system.