

Fugitive Economic Offenders Act, 2018- a Rs. 100 Crore Offence.

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Date: 20th April 2020

Fugitive Economic Offenders Act, 2018—a 100 crore offence.

1. In the year 2018, lawyer turned politician, Mr. Arun Jaitley toyed with an idea of a bill to ‘confiscate assets of big-time offenders, who flee the country to escape Indian legal system.
 2. The idea was mooted since the procedure of extradition of persons sheltering abroad and primarily accused of economic crimes--is long and arduous. The idea was to compel such fugitive accused to face the law in India.
 3. Keeping the said objective in mind, the idea formulated into one of the most stringent acts namely--Fugitive Economic Offenders Act [“Act”]. The said Act received the
- Presidential assent on 31st July 2018.
4. Vijay Mallya was the first person to bear the brunt of the Act. Nirav Modi soon followed suit. Both the persons are declared as ‘*fugitive economic offenders*’ under the Act.
 5. Until the declaration of these two persons as ‘*fugitive economic offenders*’, not many were aware of the scope and the scheme of the Act. As is often with Mr. Mallya and Mr. Modi, their names attracted public attention, this time to the said Act.
 6. What is the scheme of the Act? Who is a ‘*fugitive economic offender*’? To whom does the Act apply? Is it in addition to Prevention of Money Laundering or Indian Penal Code or a complete Act in itself? The present article attempts to throw a light into the fundamentals of the Act apart from answering all the above questions.
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Who is a 'fugitive economic offender'?

7. A fugitive economic offender is a person against whom a warrant of arrest has been issued by a Court of Law in India and (i) one who has left India to avoid criminal prosecution (ii) being abroad refuses to return to India to avoid criminal prosecution [section 2(f) of the Act].
8. Apart from above, a fugitive economic offender is one against whom an offence has been registered amounting to the tune of Rs. 100 Crores. It is the first time that an Act dealing with a criminal offence consciously mentions a bracket of amount as one of the conditions of the offence.
9. Vijay Mallya and Nirav Modi, both, have been declared '*fugitive economic offender*' under the Act. Both of them have challenged the said declaration before the concerned Court of Law and the matter is sub-judice.

Power under the Act

10. The Act is widely rigorous and attempts aims at achieving its objective of being a deterrent law. The question that arises is what happens if an individual is declared as a '*fugitive economic offender*' [**"FEO"**]?
 11. When an individual is declared as an FEO, following consequences follow:
 - The very first step would be provisional attachment of properties of the FEO, both India and abroad, by a Special Court or Director [appointed under the Act] and pursuant to attachment—Confiscation of the properties.
 - It is to be noted that Confiscation would soon follow pursuant to the Attachment of the properties. Confiscation following the Attachment is an extremely
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punitive step embedded in the Act.

- Pursuant to the Confiscation, the property so attached and confiscated vests with the Central Government. Such an aggressive provision, which is not seen in any other Act, would render the FEO economically weaker, thereby putting a considerable amount of pressure upon him to face rule of the law.

- The Central Government, then, can appoint an Administrator to manage or dispose of the property so attached and confiscated.

12. Thus, as can be seen the moment an individual is declared as a 'FEO' [fugitive economic offender], the assets owned by him vests with the Government of India, thereby disallowing him to enjoy the fruits of the alleged proceeds of crime or in other words, property amassed by alleged ill-gotten money.

What kind of properties are confiscated?

13. There are two kinds of properties that get confiscated—(i) 'proceeds of crime' situated in India or abroad and (ii) any other property or benami property in India or abroad owned by the FEO.

14. It is important to note that the words used in the Act are '*any other property*' belonging to the FEO. Thus, in other words, any property of the FEO, which may not be associated with tainted money or money from crime can be attached, confiscated and acquired by the Government of India.

15. The factum of 'any other property' being able to attach by the concerned investigating agency is in stark contrast to the provisions of Prevention of Money Laundering Act in relation to attachment of properties.

16. Under the Prevention of Money Laundering Act, only '*proceeds of crime*' can be attached. Thus, the investigating agency must show a *prima facie* link or connection between the subject matter property and the tainted money. If it fails to do so, the attachment to the property could be vacated [depending on other circumstances of the facts of the case].
17. As can be seen, this is stark contrast to the provisions of the Act, i.e. Fugitive Economic Offenders Act, wherein '*any other property*' can be attached, confiscated and even acquired by the Government of India.
18. Similarly, another instance of the Act being punitive is the fact that the property belonging to the FEO outside the shores of India can also be attached, confiscated and acquired by the Government of India.
- Vijay Mallya: fugitive economic offender*
19. On January 5, 2019 a Special Court in Mumbai declared Vijay Mallya a '*fugitive economic offender*'. Mr. Mallya has challenged the said order before the Appellate Court, i.e. Hon'ble Bombay High Court. Mr. Mallya has in a separate proceeding challenged the provisions of the Fugitive Economic Offenders Act, 2018 before the Hon'ble High Court of Bombay.
20. Vijay Mallya and Nirav Modi's are one of the 7 persons against whom the Act has been launched. One is yet to see whether the stringent provisions of the Act will yield any result.
21. The provisions of the Act have been formulated to avoid another Mallya or Modi case in the making. In the past there have been several economic escapees, who have successfully pulled off a 'heist' in their host city and sheltered in UAE or United Kingdom. It is expected that the Government launches a
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prosecution against them as well. Perhaps the success in Mallya's or Modi's case would be a required confidence booster for other economic fugitives.

22. Bad or good, the steps taken by the Government are in the correct direction and it is expected that the compass steers in the way to bring back the money allegedly plundered by such economic fugitives.

23. Seizure and Confiscation of assets of such economic fugitives brings us a step closer to circulating the money belonging to the Banks and public back into where it belongs—the economy.

24. Fugitive Economic Offenders Act is a torpedo launched by the Government against plunderers of the economy. Let's hope the missile continues in the right direction even after Captain of the ship changes.
