



WITH THE ASSENT OF THE PRESIDENT OF INDIA, THE FUGITIVE ECONOMIC OFFENDERS ORDINANCE, 2018 GETS PROMULGATED¹

New Law lays down the measures to empower Indian authorities to attach and confiscate the proceeds of crime associated with economic offenders and the properties of the economic offenders

Fugitive Economic Offenders Ordinance, 2018 has come into force as the President of India has given his assent to the Union Cabinet's decision to promulgate the said Ordinance. Earlier, the Union Cabinet, in its meeting held on April 21, 2018, had decided to approve the proposal of the Ministry of Finance to promulgate the Fugitive Economic Offenders Ordinance, 2018.

Fugitive Economic Offenders Ordinance, 2018 ("the Ordinance") lays down the measures to empower Indian authorities to attach and confiscate proceeds of crime associated with economic offenders and the properties of the economic offenders and thereby deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts.

The need for the Ordinance has arisen as there have been 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. The existing civil and criminal provisions in law are not entirely adequate to deal with the severity of the problem. In view of the above context, a Budget announcement was made by the Government in the Budget 2017-18 that the Government was considering to introduce legislative changes or even a new law to confiscate the assets of such absconders till they submit to the jurisdiction of the appropriate legal forum. Pursuant to the above announcement, the Fugitive Economic Offenders Bill, 2018 was introduced in Lok Sabha on the March 12, 2018. The Fugitive Economic Offenders Bill, 2018 was listed for consideration and passing in Lok Sabha on many occasions after its introduction. The Lok Sabha has since been adjourned sine die and both the Houses of Parliament were prorogued on April 6, 2018.

In order to address the deficiency in the present laws and lay down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, the Ordinance is being proposed. The Ordinance makes provisions for a Court ('Special Court' under the Prevention of Money-laundering Act, 2002) to declare a person as a Fugitive Economic Offender. A Fugitive Economic Offender is a person against whom an arrest warrant has been issued in respect of a scheduled offence and who has left India so as to avoid criminal prosecution, or being abroad, refuses to return to India to face criminal prosecution. A scheduled offence refers to a list of economic offences contained in the Schedule to this Ordinance. Further, in order to ensure that Courts are not over-burdened with such cases, only those cases where the total value involved in such offences is 100 crore rupees or more, is within the purview of this Ordinance. The Fugitive Economic Offenders Ordinance, 2018, inter alia provides for-

¹ Available at: <http://www.pib.nic.in/PressReleaseDetail.aspx?PRID=1529875>

- (i) Making an application before the Special Court for a declaration that an individual is a fugitive economic offender;
- (ii) Attachment of the property of a fugitive economic offender and proceeds of crime;
- (iii) Issue of a notice by the Special Court to the individual alleged to be a fugitive economic offender;
- (iv) Confiscation of the property of an individual declared as a fugitive economic offender or even the proceeds of crime;
- (v) Disentitlement of the fugitive economic offender from defending any civil claim; and
- (vi) Appointment of an Administrator to manage and dispose of the confiscated property under the Act.

If at any point of time in the course of the proceeding prior to the declaration, however, the alleged Fugitive Economic Offender returns to India and submits to the appropriate jurisdictional Court, proceedings under the proposed Act would cease by law. All necessary constitutional safeguards in terms of providing hearing to the person through counsel, allowing him time to file a reply, serving notice of summons to him, whether in India or abroad and appeal to the High Court have been provided for.

Major impact : It is expected that a special forum to be created for expeditious confiscation of the proceeds of crime, in India or abroad, would coerce the fugitive to return to India to submit to the jurisdiction of Courts in India to face the law in respect of scheduled offences.

Since the proposed law would utilize the existing infrastructure of the Special Courts constituted under the Prevention of Money-laundering Act, 2002 and the threshold of scheduled offence is high at Rs. 100 crores or more, no additional expenditure is expected on the enactment of the Bill.

No. of beneficiaries : The Bill 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.

States/districts covered : The new law would cover all the States and Districts.

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