

FUGITIVE ECONOMIC OFFENDERS ORDINANCE, 2018 – ANALYSIS

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ABSTRACT

Another bold step have been taken by the government on path of treatment of an unhealthy economic condition of the country i.e., Fugitive Economic Offenders Bill, 2018, after Insolvency and Bankruptcy Code, 2016. This Bill is only for all those economic offenders who flee from the country to avoid criminal prosecution of the court of law and also refuse to return back. This Bill gave power to the Government to confiscate the property of economic offenders in India as well as their foreign property and Benami property. This Bill would be proved one of the stringent laws for those economic offenders who try to undermine the laws of the land. The cases where the total value of offence crossed 100 crore or more will come under the purview of the bill. The no. of corporate fraud is increasing day by day, after Vijay Mallya case another big fraud i.e., PNB fraud has opened in front of the Country. The urgency of this ordinance would have seen by the past scams and all those fugitive economic offenders. This research article will analyze the need of the Bill and cover all the impacts of the bill on the economy of the country. The researcher also gives her focus on the main provisions and the procedural part of the drafted bill. The research article would help to understand the importance and would also throw light on that part which weakened the significance of the bill. This research paper will give conceptual clarity with clarity of provisions.

INTRODUCTION

After, Vijay Mallya had fled the country to avoid being arrested for economic fraud; Finance Minister Mr. Arun Jaitley had announced that the union cabinet would come with the stringent law for such economic offenders in the next union budget. This ordinance came early in September, 2017 after the scam of Punjab National Bank (PNB), India's second largest public sector bank, of worth Rs. 11,400 crore. It was the reflection of Modi's government to the PNB fraud done by diamond merchant Nirav Modi and his uncle Mehul Choksi and other economic offences had done in past. The Fugitive Economic Offenders Bill, 2018 proposed by Ministry of Finance approved by the Union Cabinet, Chaired by honorable Prime Minister Shri Narendra Modi on 1 March, 2018.¹ This bill will able to deter all such economic offender who had fled the country for being away from the Indian courts and proceedings by confiscate their property which includes *Benami* properties. Looking forward to current scenario, we have found that the Banks, Financial Institutions, Private lenders, etc are into the threat that their loans would be converts into the Non-Performing Assets (NPA). India has the second highest ratio of NPA's in the world. The ratio is increasing day by day which adversely affect the regulation of money in the economy. There are two main problems, which has faced by the country in the past years were insolvency and such fugitive offenders of economy who had fled the country. To resolve insolvency, Government had introduced Insolvency and Bankruptcy Code in 2016. But we do not have any legislature before this bill for such economic offenders like Mallya and Modi. There is a necessity that such economic offences should have stop here, otherwise the Banking system will have to face serious consequences. PNB fraud case, involving huge amount of worth Rs. 11,400 crores (\$1.77 billion) made shudder the whole banking system and the Government as well and the most frustrated part was that the country do not have any law or code which could convert this huge bad debt into performing asset for bank. In the draft of the bill, it has been clearly said that a Bill to provide for measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, thereby preserving the sanctity of the rule of law in India.²

¹ Cabinet approves Fugitive Economic offenders Bill, 2018, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=176920> last visited on 18-04-2018.

² The Fugitive Economic offenders Bill, 2017, available at <https://dea.gov.in/sites/default/files/Draft%20Fugitive%20Economic%20Offenders%20Bill%2C%202017-22.3.2017.pdf> last visited on 10-06-2018.

BACKGROUND

There has been several times that the economic offenders fleeing the jurisdiction of Indian Courts, anticipating the commencement, or during the pendency in litigation, of the criminal proceedings. The absence of such economic offenders from Indian courts has several deleterious consequences. First – it hampers investigation in criminal cases, second- it waste the precious time of the court of law, third- it undermines the rule of law in India.³ The several instances of economic offences are of non-repayment of loans taken by Banks and other financial institutions and all big amount loans get converted into non-performing asset. This situation get worsen day by day and it is very serious condition for financial health of Banks and other financial institutions. There are some particular laws which exist for the recovery of debt and dues for Banks like Recovery of debts dues to Bank and Financial Institutions Act, 1993(RDDBFI) and the SARFAESI act, 2002 gives power to secured creditor of selling the secured asset to recover its debt. Although these acts have been present, the provisions of civil and criminal law are not adequate for dealing with severity of problem. It is, therefore, felt 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. 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.⁴

As we have been discussing that it is not for the first time in Nirav Modi's case that someone who fled the country after done an economic offence, but there is list of the billionaire who has done this before to the country.

Minister of External Affairs gave the list of 31 suspected economic offenders; this list includes Nirav Modi and his uncle Mehul Choksi who are under investigation of Enforcement Directorate and the CBI, the Government has told to the Lok Sabha. This list also includes

³*Supra* 1 last visited on 10-6-2018

⁴ *Ibid*

Nirav Modis's wife Ami Nirav Modi and son Neeshal Modi, Liquor barren Vijay Mallya, Cricket tsar Lalit modi, arms dealer Sanjay Bhandari, and so on.⁵

Vijay Mallya

Liquor barren, Vijay Mallya who has fled the country in 2016 wanted by Indian Courts in charges relating to his dead Kingfisher Airlines defaulting of loans from various Indian banks of Rs. 9000 crore approximately.

Lalit Modi

Lalit Modi known as cricket czar, expelled from BCCI in 2010 for bid rigging and money laundering and other charges. He faces the charges of tax evasion; money laundering and proxy ownership linked to the IPL left the country in the year 2010. He has been living exile in London while facing an Enforcement Directorate inquiry for financial investigation.

Deepak Talwar

Deepak Talwar, a corporate lobbyist who fled the country last year, is big fat tax evader against whom the Income -tax department has filed five prosecution complaints. He is under the I-T scanner for allegedly receiving \$100 million in individual and corporate bank accounts controlled by him and his family members in various tax jurisdictions.

Sanjay Bhandari

Controversial arms dealer Sanjay Bhandari has been wanted in India for alleged violation of the FEMA law and for alleged violation of the Official Secrets Act (OSA). Bhandari's case first came to light after the I-T department conducted searches against him in April 2016 and recovered certain "sensitive" official defense documents from his premises. Bhandari is reported to have left India on December 2016 via Nepal. Bhandari is also believed to be in London now.⁶

⁵ 31 Economic offenders have fled the country: Government, available at <https://timesofindia.indiatimes.com/business/india-business/31-economic-offenders-have-fled-india-government/articleshow/63317671.cms> last visited on 11-06-2018 at 10:08 PM

⁶ Nirav Modi leaves India: List of other Fugitive economic offenders on the run, Zee Media Bureau, available at <http://zeenews.india.com/companies/nirav-modi-leaves-india-list-of-other-fugitive-economic-offenders-on-the-run-2081546.html> last visited on 11-06-2018 at 10:43 PM

SALIENT FEATURES OF THE ORDINANCE

Fugitive Economic Offenders Bill, 2018 includes the definition of Fugitive Economic Offender, Schedule Offence, Special courts etc. This bill also provides giving an application before special courts for a declaration that an individual is a Fugitive Economic Offender. Provisions include attachment of the Offender's property in India or abroad including Benami property. An Administrator will be appointed to manage and dispose of confiscate property under Act.

Economic Offences

The economic offenders would have tried for all such offences, given under the schedule of the Fugitive Economic Offender Ordinance, 2018. **Section 2 (1) sub clause (m)** of Fugitive Economic Offender Ordinance, 2018 provides that "*Schedule 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.⁷ This section means that every offence given under this schedule would come under meaning of economic offence and any person who did schedule offence would have tried in Special Courts established under Prevention of Money Laundering Act, 2002. The list given under schedule involves offences of existing acts such as The Companies Act, 2013, The SARFAESI Act, 2002, The Prevention of Money Laundering Act, 2002, Insolvency and Bankruptcy Code, 2016 etc.

The schedule which is appended to this act, mentions this offences:-

Offences under Indian Penal Code, 1860

- S. 120B - read with any offence in this Schedule Criminal conspiracy
- S. 255 - Counterfeiting Government stamp
- S. 257 - Making or selling instrument for counterfeiting Government stamp
- S. 258 - Sale of counterfeit Government stamp
- S. 259 - Having possession of counterfeit Government stamp
- S. 260 - Using as genuine a Government stamp known to be counterfeit
- S. 417 - Punishment for cheating

⁷ Fugitive Economic Offenders Ordinance, 2018, Section 2 (1) (m)

- S. 418 - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect
- S. 420 - Cheating and dishonestly inducing delivery of property.
- S. 421 - Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
- S. 422 - Dishonestly or fraudulently preventing debt being available for creditors 423 Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
- S. 424 - Dishonest or fraudulent removal or concealment of property 467 Forgery of valuable security, Will, etc.
- S. 471 - Using as genuine a forged document or electronic record.
- S. 472 and 473 - Making or possessing counterfeit seal, etc., with intent to commit forgery.
- S. 475 and 476 - Counterfeiting device or mark.
- S. 481 - Using a false property mark.
- S. 482 - Punishment for using a false property mark.
- S. 483 - Counterfeiting a property mark used by another.
- S. 484 - Counterfeiting a mark used by a public servant.
- S. 485 - Making or possession of any instrument for counterfeiting a property mark.
- S. 486 - Selling goods marked with a counterfeit property mark.
- S. 487 - Making a false mark upon any receptacle containing goods.
- S. 488 - Punishment for making use of any such false mark.
- S. 489A- Counterfeiting currency notes or bank notes
- S. 489B - Using as genuine, forged or counterfeit currency notes of bank notes.

Offences under the Prevention of Corruption Act, 1988

- S. 7 - Public servant taking gratification other than legal remuneration in respect of an official act.
- S. 8 - Taking gratification in order, by corrupt or illegal means, to influence public servant.
- S. 9 - Taking gratification for exercise of personal influence with public servant.

- S. 10 - Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
- S. 13 - Criminal misconduct by a public servant. Offences under the Securities and Exchange Board of India Act, 1992 12A read with section 24 Prohibition of manipulative and deceptive devices, insider trading and substantial 24 Acquisition of securities or control.

Offences under the Customs Act, 1962

- S. 135 - Evasion of duty or prohibitions.

Offences under the Companies Act, 2013

- S. 74 - Non-repayment of deposits
- S. 76A - Punishment for Contravention of Section 73 or Section 76.
- S. 206 (4) 2 and proviso Carrying on business of a company for a fraudulent or unlawful purpose.
- S. 213(b) - proviso Carrying on business of a company with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose.
- S. 447 - Punishment for Fraud.
- S. 452 - Punishment for withholding of property.

Offence under the Limited Liability Partnership Act, 2008

- S. 30 (2) - Carrying on business with intent or purpose to defraud creditors of the LLP or any other person or for any other fraudulent purpose.

Offence under the Insolvency & Bankruptcy Code, 2016

S.69 - Punishment for transactions defrauding creditors.

Fugitive Economic Offender

Section 2 (1) sub clause (f) of Fugitive Economic Offender Ordinance, 2018 provides that “*fugitive economic offender*” means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who—

(i) has left India so as to avoid criminal prosecution; or

(ii) being abroad, refuses to return to India to face criminal prosecution;

In the common parlance, we could say the Fugitive economic offender is an individual who has left the country to avoid criminal prosecution and refuse to return to face Indian jurisdiction. But only fleeing the country is not sufficient cause to declare a person as a fugitive offender, a person should have committed one of the scheduled offences defined under ordinance.

Procedure to declare an individual as a Fugitive Economic Offender:-

- a) Director or any other officer not below the rank of Deputy Director authorised by the Director, may file an application to Special Court to declare an individual as a Fugitive Economic Offender.⁸
- b) After filing an application, Special Court shall issue a notice to a person who is required to appear at the specified place and time not less than six weeks from the date of issue of such notice.⁹
- c) If a person appears himself before Special Court, proceedings may terminate by Court under this ordinance.¹⁰ If a person 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 4.¹¹ An individual to whom notice has been issued fails to appear himself or through counsel, Special Court may proceed to hear an application after recording reasons in writing.¹²

⁸ Section 4 (1) of Fugitive Economic Offenders ordinance, 2018

⁹ Section 10 of Fugitive Economic Offenders ordinance, 2018

¹⁰ Section 11(1) of Fugitive Economic Offenders ordinance, 2018

¹¹ Section 11(2) of Fugitive Economic Offenders ordinance, 2018

¹² Section 11(3) of Fugitive Economic Offenders ordinance, 2018

- d) After hearing the application under section 4, if the Special Court is satisfied that an individual is a fugitive economic offender, it may, by an order, declare the individual as a fugitive economic offender for reasons to be recorded in writing.¹³

Consequences after being declared as Fugitive Economic Offender:-

- The Special Court may order that any of the following properties stand confiscated to the Central Government— (a) the proceeds of crime in India or abroad, whether or not such property is owned by the fugitive economic offender; and (b) any other property or benami property in India or abroad, owned by FEO.
- Any Court or Tribunal in India, in any civil proceeding before it may, disallow such individual from putting forward or defending any civil claim.
- Any Court or tribunal in India in any civil proceeding before it, may, disallow any company or limited liability partnership from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company or the limited liability partnership, or any promoter or KMP or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as FEO.¹⁴

Properties which can be confiscate

Confiscation of properties is a significance feature of this ordinance which gives assurance to the recovery of debt of the Banks, Financial institutions and other creditors. This feature of confiscation of properties enlightens the importance and urgency of this ordinance. There is no specific provision for a property or properties which can be confiscated but there are many provisions given under the ordinance giving directions to the authorities that which properties have to be confiscated or whom properties have to be confiscated.

The application which may file by Director or any other officer to the Special Court, necessarily mentioned the list of some properties, which are:-

¹³ Section 12(1) of Fugitive Economic Offenders ordinance, 2018

¹⁴ Fugitive Economic Offenders Ordinance-2018 Promulgated; Salient Features, Ashok K.M, <http://www.livelaw.in/fugitive-economic-offenders-ordinance-2018-promulgated-salient-features-read-ordinance/> on 25-06-2018 at 3:45 PM

- (i) List of properties or value of properties believed to be the proceeds of crime.
- (ii) including any such property outside India for which confiscation is sought;
- (iii) a list of properties or benami property owned by the individual in India or abroad for which confiscation is sought; and
- (iv) a list of persons who may have an interest in any of the properties listed under (ii) and (iii) points.[Section 4(2)¹⁵]

Definitions of properties mentioned above:-

Proceeds of crime: - Section 2 (k) of Fugitive Economic Offender Ordinance, 2018 means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a Scheduled Offence, or the value of any such property, or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Benami Property: - Section 2 (b) of Fugitive Economic Offender Ordinance, 2018 define “benami property” and “benami transaction” shall have the same meanings as assigned to them under clauses (8) and (9) respectively of section 2 of the Prohibition of Benami Property Transactions Act, 1988;

Authorities defined under the ordinance

There are certain authorities which have been defined under the ordinance have different functions and some special powers given by the ordinance. Mainly, three authorities who have been responsible for the implementation of the ordinance they are –

- I. Administrator
- II. Director
- III. Special Courts

¹⁵ Fugitive Economic Offenders ordinance, 2018

I. Administrator

Administrator is the authority, which has been defined under Section 2 (a) “Administrator” means an Administrator appointed under sub-section (1) of section 15.

Section 15 of the ordinance talks about *management of the properties confiscated under the ordinance*, under section 15(1) Central Government may by notification in Official Gazette appoint as many officers, as they may think fit not below the rank of Joint Secretary of Government of India to perform function of “administrator”. Administrator is a kind of subordinate officer or officers of the Central Government performs function directed by Central Government.

Functions which have to be perform by administrator, such as:-

- Received and managed the properties which were confiscate by passing order under this ordinance.¹⁶
- Central Government may direct administrator to dispose of the property which is vested in CG under section 12.¹⁷

II. Special Courts

The definition of Special courts has defined in **Section 2 (n)** of Fugitive Economic Offender Ordinance, 2018 *means a Court of Session designated as a Special Court under sub-section (1) of section 43 of the Prevention of Money-laundering Act, 2002.*

According to Section 43 of the Prevention of Money-laundering Act, 2002 – 1. The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification. Explanation.- In this sub-

¹⁶ Section 15(2) of Fugitive Economic Offenders ordinance, 2018

¹⁷ Section 15(3) of Fugitive Economic Offenders ordinance, 2018

section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

2. While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

In this ordinance, Special Courts has designated with some certain **powers** such as –

- An application has to be filed with special court under section 4 (1) for declaring any person as a Fugitive Economic Offender. Special Courts has right to declare a person as a Fugitive Economic Offender under section 12 of the ordinance¹⁸.
- A property may attached under section 5 (1) of the ordinance¹⁹ with the permission of Special Courts if the referred property –
 - (a) for which there is a reason to believe that the property is proceeds of crime, or is a property owned by an individual who is a fugitive economic offender; and
 - (b) which is being or is likely to be dealt with in a manner which may result the property being unavailable for confiscation:
- Special court has power to issue a notice to an individual who has alleged to be a Fugitive Economic Offender which shall require –
 - (a) 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
 - (b) 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 under this Ordinance.²⁰

¹⁸ Fugitive Economic Offenders ordinance, 2018

¹⁹ *ibid*

²⁰ Section 10 (1) & (3) of Fugitive Economic Offenders Ordinance, 2018

- On the declaration of an individual to as a Fugitive Economic Offender under section 12 of the ordinance, Special Court has power to order that any of the following properties stand confiscated to the Central Government –

(a) the proceeds of crime in India or abroad, whether or not such property is owned by the fugitive economic offender; and

(b) any other property or benami property in India or abroad, owned by the fugitive economic offender.

III. Director

According to this ordinance Director means a Director appointed under sub-section (1) of section 49 of the Prevention of Money-laundering Act, 2002.²¹

As per Section 49(1) of Prevention of Money-laundering Act, 2002 Director is a person, who may appoint by the Central Government as it thinks fit to be authorities for the purposes of this Act.

There are some **special powers** which can be exercised by the Director within the meaning of the provisions of this ordinance, such as -

- Director or any other officer (not below the rank of Deputy Director) authorized by director may file an application to the Special Courts, and has reason to believe or any other material in his possession that an individual is a FEO under Section 4(1) of the Ordinance²².
- Director or any other officer (not below the rank of Deputy Director) authorized by director may attach any property mentioned under section 4 in the application by in order in writing in manner which may be prescribe, as per section 5(1) of the Ordinance²³.

²¹ Section 2(1) (e) of Fugitive Economic Offenders ordinance, 2018

²² Fugitive Economic Offenders ordinance, 2018

²³ *ibid*

- Section 6 of the ordinance says that the Director or any other officer shall, for the purposes of section 4, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
 - (a) discovery and inspection;
 - (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;
 - (c) compelling the production of records;
 - (d) receiving evidence on affidavits;
 - (e) issuing commissions for examination of witnesses and documents; and
 - (f) any other matter which may be prescribed.
- Power of survey has given to the Director or any other officer (not below the rank of Deputy Director) authorized by director under section 7 (1) if he has reason to believe or by any material in his possession that an individual is a FEO, he may enter any place –
 - (i) within the limits of the area assigned to him; or
 - (ii) in respect of which he is authorised for the purposes of this section, by such other authority, who is assigned the area within which such place is situated.
- Within the meaning of section 8 of the ordinance the Director or any other officer (not below the rank of Deputy Director) authorized by director has reason to believe (the reason for such belief to be recorded in writing) that any person—
 - (i) may be declared as a fugitive economic offender;
 - (ii) is in possession of any proceeds of crime;
 - (iii) is in possession of any records which may relate to proceeds of crime; or
 - (iv) is in possession of any property related to proceeds of crime,

then, subject to any rules made in this behalf, he may authorise 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 Ordinance.

- Director or any other officer (not below the rank of Deputy Director) authorized by director may file supplementary application in such circumstances which may specified in section 13 of the ordinance²⁴.

IMPACT OF THE ORDINANCE

The main aim of this ordinance is to deter fugitive and compel a person to return back to the country for facing courts. It will have a great impact on the present economic condition of the country which is literally depressing. As we all know the conditions of Banks and other lending financial institutions are deteriorating day by day which directly affects development of the country.

This 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

²⁴ Supra 20

financial defaults committed by such fugitive economic offenders, improving the financial health of such institutions. It is expected that the 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.²⁵

SHORTCOMINGS OF DRAFTED ORDINANCE

As we all know this ordinance is result of the demands of current economic conditions which are getting worse day by day in respect of higher ratio of NPA's and all big fat scams which has been open yet. When Vijay Mallya has fled the country in 2016 with about Rs. 9000 crores of Indian Banks, Government was having a pressure of banks and public to return back Mr. Mallya and he has to face criminal proceedings in Indian Courts. There are many cases as similar to Vijay Mallya that we have already discussed above. So the government somehow known that they have to find a solution to this problem. But in 2017 when PNB fraud opens in front of the public, government realized that now it is time and there is a need of any legislature to stop these offenders from fleeing the country as soon as possible. The Fugitive Economic Offenders Bill was first introduced in 2017 right after the PNB Scam, from that we can understand the urgency of government to present a bill. The President gave his assent to Bill in March 2018. There was no delay in passing a bill, because somehow the importance of this legislature has known to the government. This bill has drafted with the stringent provisions and law makers tried to give speedy proceedings but in their haste, drafters have failed to provide enough safeguards to the new law. There are some loopholes in passed ordinance which can be figure out easily that we should have discussed.

- (i) While drafting the ordinance, drafters did not keep constitution of India in their mind and draft in the haste. According to Section 14 of the ordinance i.e., **Power to disallow civil claims**, once a person is declared an FEO, he or she is debarred from making or defending any civil claim before any court or tribunal in India. By using the terms "any civil claim" and "any court", the person's right to access a civil court is

²⁵ *Supra* 1

effectively extinguished. This means that if an individual is part of a civil proceeding regarding his inheritance or a property dispute, which is independent of his alleged economic offences, the moment he is declared an FEO, he will be unable to defend himself or make any claim in the aforesaid proceedings.²⁶

Ubi Jus Ibi Remedium is an established legal principle, which means that every right when it is breached must be provided with a right to a remedy.

There were some cases where SC had decided their judgments on this legal principle. Such as-

Brij Mohan Lal vs Union of India²⁷ the Supreme Court had stated that it is the constitutional duty of the state to ensure that everyone citizen has access to the judicial system.

Tamilnad Mercantile Bank Shareholders Welfare Association vs S.C. Sekar and Ors,²⁸ the Supreme Court held that the access to justice is a human right, and an aggrieved person cannot be left without the ability to seek judicial recourse.

In 2016, the constitutional bench of the Supreme Court in ***Anita Kushwaha vs Pushap Sudan*** held that the right to access courts is an inalienable right, which “is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens.” In the same judgment, the court declared that the right to access justice is a part and parcel of the right to life under Article 21 of the constitution and that it also forms a facet of the right to equality before the law under Article 14 of the constitution. An important aspect of this right, as specified by the court, is the right to access an effective adjudicatory mechanism.²⁹

²⁶ The Fugitive Economic Offenders Bill Leaves a Lot to Be Desired, Arvind Kurian Abraham, <https://thewire.in/law/the-fugitive-economic-offenders-bill-leaves-a-lot-to-be-desired>, on 26-06-2018 at 11:42 PM

²⁷ AIR 2012, 6 SCC 502

²⁸ AIR 2008 (16) Scale 205

²⁹ *Supra* 26

- (ii) Just to putting a legislative action, hastily making of draft has done for instance, according to this ordinance fleeing the country is not an independent criminal offence but it must be depends upon offences which are mentioned in the schedule which is more likely to Prevention of Money Laundering Act, 2002. The PMLA, 2002 has been followed a same mechanism to tried offences.³⁰
- (iii) Another limitation of this ordinance could be its threshold limit i.e., the offences involves amount of Rs. 100 crores or more only come under the purview of this ordinance which means the offences involves amount of Rs. 80 crores to 90 crores or even amount of Rs. 99 crores cannot be tried under this ordinance and the person cannot be declared as a FEO until he qualifies the threshold limit. By this there is large no. of transactions that will be escaped.³¹
- (iv) While presenting a bill, the Government led emphasis on confiscation of properties of declared FEO in which properties includes Indian properties as well as properties in abroad. But to confiscate the properties of abroad is not that simple as it is written in the ordinance. While giving brief to the ordinance Finance Minister Mr. Arun Jaitley said to the media that *“to confiscate the properties in abroad later International Cooperation mechanism will be setup because this involves different countries we need their cooperation and some appropriate arrangements with countries has to be done.”* By this statement we can understand that the implementation of power to confiscate the abroad properties is too far.

CONCLUSION

The cases of an economic offence could be seen very frequently in past years and most of the cases involves huge amount of public. Such economic offenders easily fled the country with all these public money just to avoid the court proceedings and refuse to return back. Before PNB fraud scam many offenders had practice this offence of fleeing the country, like a trend

³⁰ *Supra* 26

³¹ *Supra* 26

and the government was on a path to make a solution to these grave problem but PNB scam proved as a high time for the government which involves huge amount of Rs. 11,400 crores. The PNB fraud and other scams like that of its nature raised no. of questions on the legislature of government and challenge the judiciary system of the country. The Fugitive Economic Offenders Ordinance, 2018 is an answer from the government to all questions which have been raised. This ordinance is a reflection of the actions which have been done by all economic offenders. The ordinance is a great effort taken by the present government to resolve current situations and try to do best in the interest of banks, other lending institutions and public. In the analysis of the ordinance, we have found some prominent features which are capable enough to differentiate this ordinance from other existing legislature. The ordinance is having high significance and will surely have a remarkable impact on the economy. All authorities of the ordinance are very powerful and enable to implement the strategies of the government. The ordinance gave extraordinary power to its authorities such as, to declare an individual as a Fugitive Economic offender, attachment of properties, confiscation of properties of a declared FEO includes benami properties or properties in abroad, etc. There are total 54 offences which are mentioned in the schedule of the ordinance; an individual can be tried for any offence of the schedule with the other respective conditions. Now let's move to the threshold limit of economic offence decided by the legislature i.e., Rs 100 crore or more is only for to avoid the saturation and would not affect expeditious trial motive of the ordinance. If the threshold limit decreased by the government many cases would come under this ordinance and will losses its motive of effective and speedy trial. The ordinance is also having provisions of notice to an individual for mark his presence in front of an appropriate authority before declaration of an individual as a Fugitive Economic offender, from this we could understand that there is an opportunity of being heard has been given by the legislature. This time government will not in a mood to entertain single fugitive offenders, the provisions are very stringent also give directions and time restriction to an appropriate authorities of the ordinance for taking further actions. For an effective implementation of this ordinance, provisions should be strictly followed by the authorities and should try to recover full debt from the attached properties includes benami properties. As far as the concern to the confiscation of properties in abroad, the International cooperation mechanism has to be setup as soon as practicable by the government. By this legislature there is a clear message from the government that no one has

right to undermine the laws of the country and no person is allowed to avoid Indian courts proceedings by wasting their precious time from now. With the help of this ordinance government will able to help banks or other creditors in the recovery of their debt. After all the criticism, researcher has come on this point that the ordinance is a very bold step and quick action taken by the government, it will surely help to change current position of the government as well as of the Indian judiciary.

