

## THE INTRICACIES AND IMPLICATIONS OF WHITE-COLLAR CRIME ON INDIAN ECONOMY - A JURIDICAL STUDY

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### **Abstract**

*The evolution of new mechanization in the era of globalization and liberalization switched the culture of business transactions. India stood at over 20 lakh registered Companies. India's GDP more than half logically gets contributed by these registered Companies. The rising rate of white-collar crimes, without doubt, demands stiff penalties and punishments. Nowadays, the point of coverage of white-collar crimes has carried to the organization from the individuals. Thus, white-collar crime is one such Corporate Fraud. The government and regulatory machinery have been strengthened to reduce the number of frauds after every scam; similar to other developing and some developed countries, India is in the hold of fraud, denoting the importance of a transparent, ethical, and good corporate governance framework. Thus, the Government of India proposed the Fugitive Economic Offenders Bill, 2018, to protect the investor's trust and sustainable financial growth of the country's economy. This article studies the various scams and judicial decisions to examine the perception of white-collar crime in India and highlight the existing legal and regulatory obligations.*

**Keywords:** White-collar crime, Economic offenders, Scams, Corporate Fraud, Rule of Law

### **Introduction**

The growth of business life cycles business transactions became very complex, and managing risk became a challenging task for organizations. In the general view, an intentional juggling made for personal gain or to damage another person or entity is a fraud. This shift leads to the rise of NPA's and jerks the financial strength of the country and the confidence of the general public. Thus, In March 2018 the Fugitive Economic Offenders Bill, 2018 was introduced by Arun Jaitley in Lok Shaba. The Bill shows the Government's ambitious endeavor to buttress the countless peril of economic offenders who cheat and defraud the country and its constituents only to hunt haven outside of India in an attempt to evade prosecution.

The past was filled with instances of such offenders who have more or less successfully fled from justice under Indian laws following benefiting off of scams that have cost huge loss to the country and have led to bane in investor confidence in the country. The Section 2(f) of the Bill defines a "Fugitive Economic Offender" (FEO) as an individual against whom a warrant has been issued about 55 scheduled economic offenses under the Bill and who has consequently left India to escape criminal prosecution or being abroad, refuses to return to India, to face such prosecution. With this experience and to check economic offenders from absconding from the process of Indian law by addressing relocation to a foreign jurisdiction and the Fugitive Economic Offenders Bill, 2018 (FEO) has been introduced, thereby extending the jurisdiction of Indian courts. FEO is developed with the objective, as the preamble states, "A Bill to provide for measures to obstruct economic offenders from violating the process of Indian law by absconding away from the jurisdiction of Indian courts." This paper aims to study the interoperability of the Bill upon the jurisdiction of Indian courts that shall help the country recover its portions due to severe economic offense caused by an individual economic offender.

### **Significance of Study**

White-Collar Crimes will have an adverse effect not only on a particular business or industry but also on the whole economy. White-Collar Crimes decrease the confidence of the individual, investors, shareholders, banks, financial institutions, etc. In contempt of various legislations, regulatory authorities exist; such frauds are inevitably happening and challenging the global business environment. Thus, the Securities and Exchange Board of India (SEBI) has been introduced in 1992, but it does not have transnational jurisdiction. The intended legislation is passed considering the present economic situation of India and for the further growth of a country whose economy is fourth fastest-growing, thereby attracting investors from across the globe; such legislations are essential to prevent offenders like Vijay Mallya from escaping the clutches of law and thereby upholding the rule of law.

### **Objectives**

- To understand the meaning of White-Collar Crimes and analyze their implications for businesses.
- To examine the influencing factors for economic offenses and to observe the regulatory deficiencies in India.
- To study the role of the judiciary in economic offenses and their interpretations.

### **Review of Literature**

The UN Convention on corruption was ratified by India in 2011. It envisages seizing of domestic property without criminal conviction applicable to the matter where the offenders could not be prosecuted due to death, flight, or absence. The similar offenses that circumstance the invocation of the Bill are stipulated under the Schedule to the Bill and are derived from the Indian Penal Code, 1860; the Negotiable Instruments Act, 1881; the Securities and Exchange Board of India (SEBI) Act, 1992; the Companies Act, 2013; the Central Goods and Services Tax Act, 2017; etc. The Federal Bureau of Investigation defines, White-Collar Crimes as "Illegal acts characterized by deceit, concealment or violation of trust, which are not dependent upon the application or threat of physical force or violence."

The motive behind a crime is not always Necessity. This thought evolved with the criminologist and sociologist Edwin H. Sutherland in the year 1939, he brought up the term White-Collar crimes by defining it as a person of respectable and high social status committed in the course of his occupation. Sutherland also included crimes committed by the corporation and other legal entities within his definition.

The book titled "Eazy cases - Banking Law" by Bimal N. Patel, Dolly Jabbal, and Prachi V. Motiyani (2014) discuss and analyzes the legislative and judicial responses in India towards the Banking sector with the development of national laws and legal system. It also has discussed Technology and Banking in India. This book has reviewed the cases of old and new but not the technology cases.

### **Research Methodology**

Regarding research methodology, the researcher has adopted the Doctrinal method for determining the interoperability of the Fugitive Economic Offenders Bill (FEO), 2018 in its transnational jurisdiction. This research is predominantly Historical and Empirical only to find out the case law in handling the Economic offenders. Secondary data from various research articles and certified journal publications was broadly used for the study.

### **The Fugitive Economic Offender in India and its Implications**

In the Punjab National Bank, a major banking fraud was uncovered in 2018 in which several senior officials involved were found. Worth to be estimated over Rs 13,000 crore, in India's

banking history, the scam has been dubbed as the biggest fraud. Overtime of notorious PNB scam where diamond manufacturer Nirav Modi & Mehul Choksi fled the country in January 2018 with his family, the absence of offenders in the country made it difficult to work for the authorities to investigate apart from mocking the law of the country.

To regulate financial discipline and recovery of monies in case of delinquencies and irregularities several laws have been enacted. The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDBFI) secured or unsecured debts may be recovered by the Debt recovery tribunal (DRT). By attaching, selling the assets, and arresting the debtor, the recovery officer is authorized to recover the debt;

The Sarfaesi Act, 2002 states that the banks, without the intervention of the courts, can recover the secured assets if the borrower failed to discharge his liability;

Prevention of Money Laundering Act (PMLA), 2002 in the scheduled offense for confiscation of property derived from money laundering of proceeds of crime. Under the PMLA, the Directorate of Enforcement, subject to confirmation by the adjudicating authority, is entitled to provisionally attach the property of the defaulter pending trial. In the trial, the property stands confiscated on conviction, free from all encumbrances to the Central Government. At the same time, the provision for confiscation is available consequent to the conclusion of the trial and can rarely be used expeditiously. Further, such confiscation is punishment for the offense committed and not strictly as an impediment for any law evading accused to return to India;

Under Section 37A of the Foreign Exchange Management Act (FEMA), 1999 enumerates that if any foreign exchange, foreign security, or immovable property is held in contravention of Section 4 of the FEMA Act its value equivalent in India may be confiscated. Subsequently, such confiscation may be confirmed or set aside by the competent authority. Till the disposal of adjudication the order of the competent authority shall continue. And, during this process, if any person brings back the same into India, the competent authority may set aside the seizure;

The Insolvency and Bankruptcy Code (IBC), 2016 requires the application of the insolvency resolution process in an appropriate forum incorporating a restructuring of the debts over the formulation of a repayment procedure.

In addition to the mentioned enactments, the financial organization of Asian country from time to time issued circulars wherever banks and financial establishments were needed to meet up with it the small print of willful defaulters above a specified limit. Despite the above efforts, the incidence of coverage of economic offenses has been on a steep rise. Upon this an attempt to organize economic offenders from avoiding the process of Indian law by resorting to relocation to a foreign jurisdiction and thereby remaining outside the jurisdiction of Indian courts, the Fugitive Economic Offenders Bill, 2018 (FEO) has been proposed with the objective, as the preamble states "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." The exclusive feature of the FEO is that it gives power to confiscate the property of economic offenders absconding from India until they submit to the jurisdiction of the appropriate legal forum.

This attribute in the FEO Bill has been introduced in India's ratification of the United Nations Convention against Corruption (UNCAC) in 2011. The UN convention recommends non-conviction based asset confiscation for corruption related matters. Asset recovery is stated distinctly as a fundamental principle of the Convention. Member countries are bound by the UNCAC to aid mutual legal assistance for the prosecution of offenders and in tracing, freezing, and confiscating the proceeds of corruption.

It is typically discovered that financial gain attained from the unlawful activity is routed to another country not questioned where is the source of income. Since the offender has escaped from the corresponding state, they no longer can be held liable in another state with help of the principle of statehood. Thus the introduction of a Statute, which helps track such offenders, is

important. The ambit of proceeds of crime under FEO includes the property within and outside India acquired from any criminal activity. Hence, the FEO aims at capturing the offender's property within and outside India as well, acquired both from legal and illegal ways.

### **Constitutional Validity of Fugitive Economic Offenders Bill**

The FEO Bill will be brought by the Legislature permits the govt to supply measures to discourage economic offenders from evading the procedures of Indian law by escaping outside the jurisdiction of Indian courts and create a reasonable classification of people based on intelligible differentia under Test of Reasonable Classification.

While Article 14 of the Constitution of India for successful administration of justice allows reasonable classification for the needs of legislation, it forbids any variety of class legislation. In the case of *State of Bihar Vs Budhan Chaudhary*, AIR 1955 SC 191, the Hon'ble Supreme Court laid down the test of reasonable classification, which provides that the classification proposed in the legislation must be endowed on intelligible differentia and that there must be nexus between the classification and the object sought to be achieved under the Act. The expression intelligible differentia means difference capable of being understood and should be reasonable and not arbitrary. It is submitted that the Bill creates a classification of offenses based on a threshold value of Rs.100 crores, as the perambulatory clause of the FEO Bill states that this is a Bill for Fugitive Economic Offender when we ferret about the term; it is defined as under section 2(f) of FEO that: "fugitive economic offender" means that a person against whom a warrant for arrest in connection to a Scheduled Offense has been issued by any Court. So, when we trace schedule offense definition, the ambit covers a person against whom an arrest warrant has been issued against a crime enumerated in the Bill, and the value of offense is not less than Rs. 100 crore;" The civil provisions deal with the issue of non-repayment of debt.

While effective in serving this purpose, they create no special provisions to deal either with:

- high-value offenders;
- people who may need to be absconded from India when any criminal case is pending.

In the case of such absconders, the overall provision about "proclaimed offenders" under Section 82 of the Code of Criminal Procedure, 1973, a criminal court can publish a proclamation if it has reason to believe that a person against whom a warrant has been issued is absconding. Persons accused of serious offenses listed in Section 82(4) can name a 'proclaimed offender' after such inquiry as the Court deems necessary. Under Section 83, against whom proclamation is issued, the property of the person within the district may be attached. If the property is outside the district, the concerned district magistrate must endorse the attachment. However, this provision has certain key drawbacks when applied to high-value economic offenders. In major defaults, criminal proceedings are likely to be in various criminal courts across the country where assets are located. This multiplicity of proceedings may lead to adverse orders of attachment by different courts. Second, a court is not probable to attach property outside its jurisdiction in the first place without the procedure for approval being followed. If followed, the same will requires more time. At the end of such delays, the offenders can continue to remain outside the jurisdiction of Indian courts for a considerable period. There are many instances of economic offenders fleeing the jurisdiction of Indian courts anticipating the commencement of criminal proceedings or typically throughout the completion of such adjudication. The nonappearance of such offenders from jurisdiction of Indian courts has many hurtful consequences, such as, it wastes the precious time of courts, by obstructing investigation in criminal cases, and it undermines the rule of law in India. Further, in India, most of such cases of economic offenses involve non-repayment of bank loans, thereby worsening the financial health of the banking sector. The prevailing civil and criminal provisions in law are inadequate to deal with the severity of the cases.

### **Property Rights and Doctrine of Eminent Domain**

By the forty-fourth amendment to the constitution, the property right is merely a constitutional right and not a fundamental right. Article 300-A was inserted repealing Articles 19(1) (f) and 31, taking away the right to property as a fundamental right. Such acquisition or confiscation cannot be made without the need for such property for a public purpose, and such acquisition, compensation is to be paid. "Eminent Domain" is based upon two legal maxims, "Salus populi lex suprema est" and "necessita public major estquan." It is the sovereign right of the Government to acquire any property for public purposes. Banks lend loans to a person based on deposits of another. The loan availed by Fugitive Economic Offenders is also out of deposits, made by the public in various banks. For the repayment of such deposits it can only be done when the principal amount and interest money are recovered from him since interests are also to be paid to the depositors. Taking into consideration of such a large amount of loan money running to several crores, the act of recovery must be considered as an act for public purpose. Mahajan, J., in *State of Bihar Vs Kameshwar Singh*, AIR 1952 SC 252, said that the phrase "public purpose" could not be given a "precise definition and has not a rigid meaning." The phrase could not have a static and rigid definition, and it was colored according to the statute and the social circumstance after that it was invoked. It had to be decided on a case-to-case basis to determining what falls under the ambit of the general interest of the community. In the same case, S.R.Das, J. opined that the phrase was accorded with the DPSPs and channeled to promote public welfare. To define the phrase, all the circumstances and facets of the statute wherein it appears to need to be firmly examined to find whether a public purpose has indeed has been instituted. In *State of Bombay Vs R.S.Nanji*, (1956) SCR 18, the Court opined that though the State Government was regarded as the best judge to decide whether a purpose is a public one, Courts also has the jurisdiction to determine whether the requisition passed by the Government regarding something is for a public purpose is so or not. The Constitution Bench in the *Somawanti Vs State of Punjab*, (1963) 2 SCR 774 judgment held that the Government would be the one to determine whether a specific purpose fell within the ambit of the phrase. It also held that the satisfaction for the Government regarding the same and a subsequent declaration would be final. Such a decision by the Government could only be challenged on one ground; namely, if there was a colorable exercise of power by the Government, the aggrieved party could challenge it before the Court. It was also observed in *Laxman Rao Vs State of Maharashtra*, (1997) 3 SCC 493, that the State Government has the ultimate power to decide what constitutes a public purpose. In *Kesavananda Bharati Sripadagalvaru and Ors. Vs State of Kerala and Anr*, (1973) 4 SCC 225, the court observed "any law providing for the acquisition of property must be for public purpose. The intention of legislature has to be gathered mainly from the Statement of Objects and Reasons of the Act and its Preamble." In *Yogendra Kumar Jaiswal Vs State of Bihar*, 2016(3) SCC 183, the court observed that in cases involving corruption, the property confiscated need not be paid compensation as such an act could not be completely equated with the acquisition. The Fugitive Economic Offenders Bill, 2018 is also one such legislation of Parliament to seize, confiscate and acquire any property which is the outcome of the proceeds of economic crime, keeping in mind the public interest. The violation of Fundamental Right of Access to Justice under the Bill cannot result in the Act being struck down de-facto. Courts must keep in view the compelling state interest behind such a law in the ultimate analysis of Constitutionality.

### **Analysis of the White-Collar Crime Committed**

The need for a rigid and binding law that obstructs the offenders at empowers agencies at the same has resulted in a considerable increase in:

1. Undermining the rule of law in India.
2. Non - repayment of loans.

3. The sudden increase in the proportion of Non-performing assets (NPA) directly affects the bank's health and economy of the country.
4. The absence of serious offenders during the investigation poses a challenge before the agencies.
5. Wastage of court's time.

The United Nations Convention against Corruption was ratified by India in 2011. It was enacted to uphold the Rule of law. This law is enacted to confiscating the assets of such absconders till they submit to the jurisdiction of the appropriate legal forum by empowering the concerned Indian authorities to attach and confiscate proceeds of crime and the properties of the economic offenders, thereby deterring them from evading the process of law of Indian courts and forcing them to return to India to face trial for scheduled economic offenses. This Bill was drafted after the case of Vijay Mallya came to light to that willful defaulters like him do not go scot-free. Hence the impugned legislation is not only in conformity with constitutional provisions but also in conformity with the principles of natural justice and fair trial principles, thereby and is enacted to uphold the rule of law hold as sacred in the Constitution.

### Conclusion

The Government needs to work with other countries towards easing the process of extradition and strengthening the mechanisms through which fugitive economic offenders are brought back within the jurisdiction of the Indian courts. The Prime Minister, in his nine-pronged agenda to deal with fugitive economic offenders at the 13th G20 Summit of leading global economies, also indicated the Government's steps toward the same. The Bill aims at forcing economic offenders to return to India to face trial for scheduled economic offenses. It is normal to assist various financial institutions and other banks to attain higher recovery from financial nonpayment made by such fugitive economic offenders. In larger interest, it is felt that the big bull of high-value economic offenders absconding from India to avoid the legal process seriously undermines the rule of law in India. Hence, it is inevitable to provide an effective, expeditious, and constitutionally permissible deterrent to ensure that such actions are curbed. This Bill is being proposed to serving these ends.

### References

1. Simpi, Yogini B :, A socio legal study on corporate crime and criminal liability with reference to criminal justice system in india: an analytical study, Hemchandracharya North Gujarat University, 2014, 231p.
2. Santhanam Committee Report
3. Baxi, U., Dhanda, A.: Valiant Victims and Lethal litigation: The Bhopal Case, Bombay:N.M.Tripathi and Co., 1990, p. 20.
4. Braithwaite, John. : Corporate Crime in the Pharmaceutical Industry. London: Routledge & Kegan Paul Books. (1984)
5. Ashwini Kumar :, "The perspective of corporate Criminal Liability"
6. Government of India Report of the Commission on Prevention of Corruption (1964)
7. Braithwaite, J. : 'Corporate crime and republican criminological praxis, F. Pearce and (1995)
8. Dr. Sumit Sharma :, "Corporate Crimes and Financial Fraud" Richard S. Gruner , " Corporate Criminal Liability and (Business Crime Series) , ALM Publishing.