

De Jure

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They proposed, imposed yet partially
achieved the goal!



“Uh oh, here come more regulations.”



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Each time a financial crime is committed, a new legislation is enacted to define and determine the very nature of the crime and quantum of punishment attracted by that crime. With every new case comes a new legislation, as no case is similar and not every case demands similar treatment. For instance, despite of present set of legislations already in place like Prevention of Money Laundering Act 2002 (**PMLA**), Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 (**Black Money Act**), Insolvency and Bankruptcy Code 2016 (**IBC**), Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**SARFAESI**), Recovery of Debts due to Banks and Financial Institutions Act 1993 (**DRT Act**) and provisions in Civil Procedure Code 1908, Indian Penal Code 1860, Criminal Procedure Code 1973, Income Tax Act 1960 and Indian Evidence Act 1872, that provides for powers with the lenders, tax authorities, Enforcement Directorate etc to take possession of the assets kept as security over non-payment of loans, attachment of proceeds of crime, revival of insolvent firms either by a resolution plan or liquidation of assets, order for attachment of assets given as security on non-payment of dues or loans, respectively, the enactment of the Fugitive Economic Offender Bill 2018 (**FEO Bill**) is in process.

The Fugitive Economic Offender Bill 2018

The FEO Bill provides that in the event an offender has absconded or absconds the country after committing economic crime (*as provided in the schedule*) of amounts above Rs. 1,000,000,000 (Rs. one (1) billion), his assets shall be confiscated so as to ensure that such fugitive is unable to sell his assets till such time the legal proceedings are under way. An administrator will be appointed to manage and dispose of the confiscated assets.



The FEO Bill also provides for a term 'Fugitive Economic Offender', along with a mechanism which has close resemblance with the mechanism provided in the PMLA for prevention of money laundering, confiscation and seizure of property obtained from laundered money and manner to deal with any issue connected with money laundering in India with a special reference to proceeds of crime. Under PMLA, the confiscation of property is done after completing three (3) stages that is provisional attachment, confirmation of the attachment and finally the confiscation of the property.

Whereas, under the proposed FEO Bill, the Special Court (which has the meaning similar to the meaning ascribed to it under the PMLA), has the power to authorize confiscation of all properties owned by the fugitive offender. Similarly, the definition of deputy director, director, key managerial person, proceeds of crime, special court are already provided in the PMLA and the Companies Act. The definition of scheduled offence is modified to raise the quantum from Rs. 100,000,000 (Rs. hundred (100) million) to Rs. 1,000,000,000 (Rs. one (1) billion).

The material difference in the schedules of the FEO Bill with that of the PMLA is, the FEO Bill covers the offences committed under the Companies Act, Limited Liability Partnership Act, IBC relating to non-payment of deposits, carrying on business of a company for a fraudulent or unlawful purpose, to defraud creditors, members or any other person.

The FEO Bill revolves around a mechanism to be adopted in case the offender flees the country. However one can wonder making adequate amendments in the prevailing laws to identify the economic offence at an early stage and take all preventive measures to ensure that there is no chance of the offender to flee the country. It is also important to establish stringent checks and balances on the lending agencies, proper accountability needs to be fixed on the lenders, adequate power needs to be given to the investigative agencies to seize or impound the passports or other travel documents of even first time offenders without a fear of contravening the principles enshrined in the Constitution. Presently to impound ones passport, the investigative agencies require proper filing of warrant evidencing that the person whose passport is to be seized has done some unlawful activity. Due to these procedural hiccups, much of a precious time is lost and the possible economic offender gets all the time to abscond from the country.

Multiple agencies like CBI, ED, SFIO and FIU are then set in motion to track down, investigate, and crack down the case. But despite of having highly competent agencies, the absconders are not brought to justice. Even though economic crimes are not alike and different crimes require different specialists and experts, an attempt could be made to establish a central investigative and monitoring body, who can act as an ombudsman for all the financial crimes which shall be driven by stricter regulatory compliance, in order to become more aggressive, stringent and meet the global standards. The ombudsman could be created by tapping the resource pool from existing investigative agencies, hiring of professionals like lawyers, chartered accountants, forensic auditors, IT and cyber security experts with specially trained police squads.



It is pertinent to understand whether the nation really wants another set of laws or need a strengthened legal framework with prompt enforcement to catch hold of these so called fugitives. It is required to give extra ammunition to our investigative and enforcement authorities to maintain and catch hold of these perpetrators with stringent and deterrent punishments and fines.

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