

ECONOMIC OFFENCES WITH REFERENCE TO FUGITIVE ECONOMIC OFFENDERS

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ABSTRACT

A country's economy and survival are based on the economic activities that take place within its borders. It levies taxes on its citizens to meet its financial obligations and to fund various nation-building and public-benefit activities. The people of the country follow the law of the land, and disobedience is considered an offence by the individual. India's population of 1.21 billion people contributes to the country's economy in various ways. When measured in monetary terms, these individuals' intellect, talents, and manpower form the foundation of our country's economic system. A person likes to keep everything he receives as a source of income in a secure and safe location. Some people prefer to keep their hard-earned money in banks, while others prefer to keep it in their homes. In terms of development and growth, the cycle of investments and savings keeps the country moving forward. To ensure adequate cash availability at all times, the wealth generated is circulated back and forth between individuals and financial institutions (exceptions). Our banking system, which is regulated, overseen, and managed by the Reserve Bank of India, ensures and protects wealth through various financial institutions, and uses it for a variety of purposes, including growth, lending, and investment. Economic crimes are motivated by a desire for financial gain. When it comes to surviving in today's world, the odds are stacked against you. It's not just about having enough food, drink, and a place to sleep. Money is a necessary part of survival that cannot be overlooked, and it is the driving force behind people working every day, whether doing any kind of job to make a living. You would feel more comfortable if you have more money. But, whose money are we talking about here? It is the hard-earned money that you and I earn from long hours of labor. In today's fast-paced world, having financial wealth is critical to meeting most of a person's needs. In this fast-changing world, people seek a variety of ways to meet their needs; let us discuss this in this paper

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INTRODUCTION

Every country's stability comes from the economic activities which is being carried out within its boundaries. For this purpose the government imposes taxes on the people to meet the expectations of the country by using it on the developmental activities. The people of the country have the obligation to work according to the rule of the land, and if disobeyed, it is being recognized as an offence being committed by the individual or any other person. Money is required to be earned by everyone, whether it is for necessity or for luxury. People earn money through various means like by business, jobs, sale of the property etc. Everyone prefers to keep their hard earned money in a safe and secure place. Some people prefer to keep their money in financial institutions like banks and some at their respective homes. If we talk about financial institutions or the banks, the cycle of the savings and the investments keep the momentum going in terms of the development and growth of the financial structure of the country. Our country's financial institution system or the banking system is controlled or regulated by the Reserve Bank Of India or RBI. It is truly said that RBI is the backbone of India as it ensures and safeguards the wealth of the people through various financial institutions by putting the money into the use whenever or whoever required for the purpose of development, lending etc. If

we basically talk about the driving force of economic offences, it is the greed for the money and if we talk about the survival, it is tough in today's world. Usually, the more money you have, the safer you feel. To match the living standards of today's world, people try to earn money by various means. Basically, money can be earned by two means, legal and illegal. Legally, it can be earned with the help of businesses, sale of property etc and illegally it can be earned by committing white collar crimes, tax evasion, money laundering etc. Now let us imagine a situation, all your hard earned money is deposited into a financial institution say bank, and after a certain period, you're informed by the bank authorities that your money is being lost due to a fraud. The person who has committed the fraud is nowhere seen, and an assumption is made that he flew outside the ambit or territory of the country. The financial institution or the said bank stands helpless and shocked just as you! Well that's all the topic, and our whole project is revolving around this.

The scope of profiting through illegal means was limited to individual people only, and they were involved in various illegal activities like theft, dacoity etc but with the passage of time, artificial bodies also came into existence, which included companies, businesses etc. They also started earning profits through illegal means by way of tax

evasion, money laundering etc. If we talk about banks, the practice involved there is a two way process, the financial institutions are dependent upon savings of the individuals, and the people are dependent upon the loans and advances which is being provided by banks. Therefore we can conclude that it is a two way process. Basically, if we see the banking system, it is perfect and has no loopholes. But if we see the cases of Vijay Malaya, or the case of Nirav Modi and his uncle Mehul Chowksi, These instances of misconduct do shatter our economic growth of the country, as it weakens the financial system. The very first impact is on the stock market and thereon on the financial institution like banks which provides is with loans and advances.

Earlier and even today, the financial and economic frauds are dealt with the help of money laundering act or the foreign exchange management act 1999, but due to huge scams like of Vijay Malaya etc there was a need more effective legislation. For this purpose, that is to curb the rise in the instances of the financial crimes specifically in India, a new act named as "Fugitive Economic offender's act" came into force in the year 2018. The courts in India have done a lot of things to curb such economic frauds. The objective with which FEOA, 2018 has been enacted is beyond appreciation and was much required in today's scenario. The true effectiveness of the act can only be seen or measured only when it is implemented properly with all proper amendments keeping in mind the current situation.

LITERATURE REVIEW

BOOKS REFERRED

- **Billion dollar whale: by bradley hope and tom wright**

This book is one of the best seller book. It tells us a epic tale on the topic white collar crime. It reveals about a young person from Malaysia, who siphoned billions of dollars from an fund under the nose of various watchdogs. It also focusses on various great threats to the global financial sector of the economy.

- **Criminal capital : by stephen platt**

The author in this book talks about how the criminal capital being missed miss appropriately leading to criminal ability, further he discusses about how the financial system and its resources are exploited and misused, he also highlights the actions which are required to be taken for such misconduct.

ARTICLES

- **Money laundering : challenges and current issues – by samriddha**

In this article, Samriddha tried to explain "Money Laundering" as a concept of global problem, and how it is detreating the stability, efficiency and effectiveness of the financial system of the country. Further she discussed about the recent issues and the challenges which are posing to the society at large.

- **How big is global money laundering-by j walker**

The author tried to highlight the fact that how the concept of "money laundering" is over estimate through various

models, case studies etc. According to him, once the concept and the scale of money laundering is known, then its effects, prevention or the regulation and the various law enforcements can also be measured and found.

STATEMENT OF THE PROBLEM

If we look at the present scenario, there is a sudden increase in the crimes of financial sector. Also the scope is not limited to the concept of money laundering, there are various ways like tax evasion, default in GST returns etc. Although the parliament has enacted various acts like Income Tax Act, 1961, Companies Act, 2013, Fugitive Offender's Act 2018, still there exist a serious doubt on effectiveness and efficiency of these acts and laws which are being enforced in the society.

Research Questions

- ✚ What is the concept of Fugitive Economic Offences
- ✚ Why there was a requirement of introducing a separate act
- ✚ Is the act effective enough?
- ✚ What are the various types of frauds which are taken into consideration under this act.

Hypothesis

The fugitive offender's act 2018 addresses the offender(according to the act), proficient and effective enough to curtail the examples and various instances of financial and economic offences in future.

Scope & Delimitation Of The Research Study

The scope of study is limited or restricted to companies act 2013 and fugitive Act 2018. The scope is to identify the true objective behind introducing and enacting this new act, also to highlight the various loopholes, with suggestive recommendation for improving and enhancing the quality of the act.

Significance Of The Research Study

- ✚ To study the concept of economic offences and various laws relating to it.
- ✚ To identify the various loopholes under the fugitive offender's act
- ✚ To make the suggestive recommendations to strengthen the concept of the act.

Objectives

- ✚ To study the concept of economic offences and various laws relating to it.
- ✚ To identify the various loopholes under the fugitive act.
- ✚ To make suggestive recommendations to strengthen the concept of the act.

RESEARCH METHODOLOGY

The major part of this project is analytical in nature therefore it indicates pure and applied research to understand the various financial concepts and the

problems. The rest and remaining part of the project is based upon doctrinal research. The aim of the research review is to add to an existing body of information. As a consequence, qualitative research is conducted to complement or add to the existing study.

MEANING OF OFFENCE

The Companies Act provides a platform for various corporate with various organisation regulations that are necessary and beneficial for proper functioning of corporate world so that the rights of various stakeholders are well protected. The violations of such norms or the regulations are called offences. The violation of such norms or the regulations are called offences. Essentially, law or the regulations should be such that all the subject entities should also provide an adequate and clear definition of the term “offence” and should also be deterrent enough to provide penalties and procedures so that there is an decrease trend in the economic offences of the country.

Who is fugitive economic offender?

As per the ¹Fugitive Act, an “FEO”, is ap person against whom warrant in relation to an economic offence has been issued by any court in the country and the person has left the country to avoid the prosecution, and refuses back to come back to the country. If we talk about the main objective or the aim of the act, it is to provide for solutions to deter the offenders from escaping the procedure of law by staying outside the country, and to preserve and restore the sanctity of the law relating to it.

Why the act was required?

Basically the concept of economic offences revolves around Money Laundering, Evasion of tax, Banking Frauds etc and there are many laws which are avoidable for prosecuting these offences, such as “Money Laundering Act”, “Companies Act,2013”etc. But due to increase in the economic offences and the change of platform from Manual to digital, there was a requirement of a separate act to regulate such economic offences. In 2017, the Finance Minister of our country, released a draft to address such high level offences of the country. It was observes that the criminal and civil law were not having appropriate provisions to deal with such high class offences. Therefore there was a urgent requirement of enforcing a law which

would address such offences in al better way. The ministry also argued the procedures under the law of criminal and civil were time consuming, and were creating a hurdle which was impacting financial health of the financial institution at large.

TYPES OF ECONOMIC OFFENCES

- Stock market or securities market violation
- Credit card frauds

- Evasion of tax
- Money Laundering
- Banking Frauds
- Insurance frauds
- Digital platform crimes
- Software piracy
- Theft of property
- Manipulations in foreign contributions
- Smuggling
- Fraudulent Bankruptcy
- Corruption and bribery to public servants
- Illicit drug trafficking

A. Stock market or securities market violation

The stock market fraud which is also known as securities fraud or the investment fraud is a fraudulent practice in the stock market that deliberates the people to make various decisions on sale or purchase of commodities on the basis of wrong, misleading or false information, also violation of rules and regulations of securities market.

B. Credit card frauds

It is a type of digital fraud when someone uses the card without the authorization of the person to whom the card belongs. This can happen in various ways -

If one loses the card or it is being stolen, then it can be used to make the unauthorised transactions resulting into heavy losses.

C. Insurance frauds

It is also an² illegal act on the part of a person, who could be the seller or the buyer of an insurable contract. It includes various frauds like selling of policies form fraudulent or non-existing company, failing to pay instalments or the premium etc. Basically, it is a fraud which involves exploitation of insurance contract for an illegal financial benefit.

D. Software piracy

Basically, it means stealing of an software which is legally made or protected. It includes the process of modifying, stealing, copying, distributing etc. To protect such software's, copyright laws was introduced. The main objective of these laws was to give proper credit to the people who have made such software, and compensation to the people who suffered losses due to piracy of software.

E. Smuggling

It basically means the illegal transportation of or the secret movement of goods across the nation to avoid various taxes. It usually occurs when the tax rates like that of custom duty etc. are high.

F. Fraudulent bankruptcy

It is a type of white collar crime that can take various shapes. It can be used as a weapon to conceal the various financial asset to avoid forfeiture of the asset. In simple words, in these types of frauds people simply file incomplete, false information several times. In some cases, people transfer unrevealed asset to their family and

¹<https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/769788/fugitive-economic-offenders-act-2018-deliberate-or-desperate>

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friends just to avoid taxes.

G. Corruption and bribery to public servant

It is basically an illegal activity of promising, accepting, giving the money or other monetary valuables to the public official to the public official in lieu of his duties which are illegal in nature. In the earlier years, it originally involved the interference with the judicial officers, to include the actions of all types of other government officials, this definition also tried to cover other public officials.

STEPS FOR DECLARING A PERSON AS “FEO”

- As per this act, an application is required to be filled in the special court mentioning that a particular person may be declared as an offender.
- The application must contain all the relevant information like reason for believe, and other important information, basic information of the offender etc.
- The court may then issue an official notice to the “FEO” to present himself at a particular place on a specific time.
- If the court is satisfied that the particular person is a fugitive offender, then it may record in order along with the reason to satisfy the claim.
- Further the court may also ask to confer the property of the offender, whether the property is in India or in abroad.

SOME LEADING CASES RELATED TO FUGITIVE ECONOMIC OFFENDER

A. Nirav modi

³He is a billionaire businessman who has been declared as “fugitive offender” by a special court in Mumbai. He has been accused of defrauding “Punjab national bank” by making an unauthorised use of the software which was used by PNB worldwide. He is currently under arrest by United kingdom authorities. The special court which declared him as a fugitive economic offender is “Money laundering act court” which is located in Mumbai. Nirav modi along with his uncle Mehul chowksi are the prime accused in the PNB fraud case, because of them the bank has suffered a loss of more than 10,000 crore.

B. . Vijay mallya

He was the first person who was accused of fraud and money laundering in the country. Mallya wished to expand his business, but his advisor’s advised him not to do so, because of some legal and financial restrictions, but despite their advises, he does the same. He also sold his father’s company to fund his own businesses. To run his businesses(basically the liquor and airline one)he kept on taking loans form various banks, he took the loans of

approximately 9000 crores form 17 financial institutions. SBI refused to give further loan but other banks kept supporting him as he was the member of “Upper house” of the country. In 2012, “Kingfisher” had to shut down its business operations because of non-payment of salaries, income tax etc. Further Vijay Mallya denied to pay the loan amount, which made him an economic offender.

CONCLUSION AND SUGGESTIONS

A person having an criminal mind is capable of finding various ways to ignore the law committing various serious offences. The best example can be of Mr. Carlos Ghosn, who was accused of \$100 million fraud, hopefully, both Indian based offender, Nirav Modi and Vijay Mallya took the traditional exit. In reference to the same, to address the same issue of economic offender, the government of India, made a sincere attempt to introduce “fugitive economic offender’s act, 2018”. The main objective of this act was to address the issue of the offenders who flew from the country, and choosing not to return back. Still there are many loopholes which leads to failure of proper implementation of the act. Here are few suggestions which can be taken into consideration, for proper and successful implementation of the act.

- The law makers should re – examine and change the title of the act, and it should be renamed as “ Fugitive offender’s act” to bring in every kind of offender irrespective of the offence so committed. If we analyse properly, then we will see that, the title of the act restricts the meaning of the offenders to the ambit of the person who ran away form the country. This restriction has given a free hand to the offenders who are planning to commit offence outside the definition of “offence” so mentioned in the act.
- There should be improvement in the cooperation and coordination between all the countries to investigate the money laundering and other economic offences. Further, the alternative source of income of the offender should be blocked by national and international agencies.
- The act should also provide for the punishment of the people who have knowledge about the economic offenders.
- The apex body in India should also make a provision to fix the liability of the employees that if they found guilty of “Money Laundering” or any other fraud, they would be responsible for payment of the penalty.

With the recent development in the companies act, 2013 and PMLA 2002, it might open the doors the doors of various economic offenders which are not covered under “Fugitive offender’s Act 2018”. It is really worthy to run behind the fugitives who is far away, or should we focus on the offenders or the defaulters who are present in India. Few names who are associated with this are “Bhushan Steel’s” chairman, Sahara etc. The mechanism should be such that the enforcement agencies should have a rule to address the individual who have committed the default and staying in India should be prosecuted first, and then

the one who have left the country.

The effectiveness of “Fugitive Act” in India, would only be understood if the declared fugitive offenders are brought back in the country else all the efforts which are taken in implementation will go in vain. The intention behind the introduction of the act was right, but implementation will be successful only when we make certain amendments in it. For now, all we could do is to wait for the offenders to return back to the country.

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