Fugitive Economic Offenders Bill, 2018

Why in news?

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The Union Cabinet has recently approved the proposal of the Ministry of Finance to introduce the Fugitive Economic Offenders Bill, 2018.

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What is the need for this legislation?

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- There have been several instances of economic offenders fleeing the jurisdiction of Indian courts.
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- E.g. Vijay Mallya fled the country to avoid being arrested for economic fraud, recent Nirav Modi–PNB fraud.
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- The absence of such offenders from Indian courts has several adverse consequences such as -
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i. hampering investigation in criminal cases
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ii. wasting time of courts of law
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iii. undermining the rule of law in India
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iv. non-repayment of bank loans
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v. worsening financial health of the banking sector
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- The existing civil and criminal provisions in law are not entirely adequate to deal with the severity of the problem.

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- In this context, Budget 2017-18 hinted at the introduction of legislation to confiscate the assets of such absconders.
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- The Bill comes as an effective, expeditious and constitutionally permissible deterrent to fugitive (escaping) economic offenders.
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- This would also help banks and other financial institutions to achieve higher recovery from financial defaults.
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What are the key provisions?

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- **Declaration** - The Bill makes provisions for a Court, 'Special Court' under the Prevention of Money-laundering Act, 2002.
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- A Director, appointed by the central government, will have to file an application to a Special Court.
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- This is to declare a person as a Fugitive Economic Offender.
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- **Fugitive Economic Offender** is a person against whom an arrest warrant has been issued in respect of a scheduled offence.
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- And also who has left India to avoid criminal prosecution, or being abroad and refuses to return to India to face criminal prosecution.
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- A scheduled offence refers to a list of economic offences contained in the Schedule to this Bill.
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- **Features -** Confiscation of the property of the fugitive economic offender resulting from the proceeds of crime.
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- Confiscation of other property belonging to such offender in India and abroad, including benami property.

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- The Act disqualifies those declared as offenders from either filing or defending a civil claim in court.
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- It is ensured that Courts are not over-burdened with such cases.
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- Thus, only those cases in which total value involved is 100 crore rupees or more are within the purview of this Bill.
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- **Mechanisms** - A special forum would be created for expeditious confiscation of the proceeds of crime, in India or abroad.
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- The Special court will appoint an ‘administrator’ to oversee the confiscated property.
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- The Administrator will manage and dispose of the confiscated property under the Act.
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- **Remedies** - The alleged Fugitive Economic Offender may return to India and submit to the appropriate jurisdictional Court.
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- In this case, the proceedings under the proposed Act would cease by law.
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- This is, provided that the offender returns in the course of the proceeding prior to the declaration.
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- Besides, the Court will issue a notice to the person named a ‘fugitive economic offender’.
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- Within 6 weeks from the date of notice, the person will have to present him/herself, failing which he/she will be declared a ‘fugitive economic offender’.
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- And their properties as listed in the Director’s application will be confiscated.
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- There is a 180-day window during which the property will remain attached, with a provision for appeal against confiscation order.
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- **Constitutional safeguards** - The necessary constitutional safeguards provided for in the Bill include:
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i. providing hearing to the person through counsel
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ii. allowing him/her time to file a reply
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iii. serving notice of summons, whether in India or abroad
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iv. appealing to the High Court
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- **Principle** - The Bill adopts the principle of non-conviction-based asset confiscation for corruption-related cases.
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- Notably, it is enabled under the United Nations Convention against Corruption which India has ratified in 2011.
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- The convention envisages domestic laws for confiscation of property without a criminal conviction.
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- This applies to cases in which the offenders cannot be prosecuted for reasons of death, flight or absence.
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What are the concerns?

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- **Existing provisions** - Legal provisions to confiscate the assets of offenders already exist; however inadequate.
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- These include the provision in the Code of Criminal Procedure for attachment of the property of 'proclaimed offenders'.
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- It also includes the Acts targeting smugglers, foreign exchange offenders and traffickers in narcotics.
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- **Concerns** - Proceedings for forfeiture of property under these have been marked by shortcomings and procedural delays.
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- Disposal of confiscated assets had not been easy, especially at a price sufficient to recoup losses or pay off all creditors.
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- Also, how far will the threat of confiscation of property be a serious deterrent to the offender is highly uncertain.
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- **Challenges** - Under the present, Bill confiscation is not limited to the proceeds of crime.
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- It further extends to any asset owned by an offender, including benami property.
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- Such clauses are liable for legal challenge, especially if there are third party interests and doubts about real ownership.
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Source: PIB, The Hindu

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