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FUGITIVE ECONOMIC OFFENDERS AND COMPLIANCE WITH EXTRADITION TREATIES: INDIA'S LEGAL FRAMEWORK AND CHALLENGES

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Abstract:

Legal and Regulatory Reforms to Curb Economic Offenders: It is no secret that there has been a spike in the escape of economic offenders from India in recent days. Recognition of right from a refugee to apply for asylum may be inferred, it is submitted from the Act of 1965, and by the sections already referred to from the 1959 Act, and in either case from the rather general wording thereof. This paper looks into the interplay between these two legal instruments and their role in securing the involvement fugitive economic offenders who commit crime abroad.¹

Introduction:

Economic crimes have become a serious threat to India's economic security, and many large-scale economic frauds have been reported over the last few years. The worrying trend has seen suspects of key economic crimes escape the country and the headache has remained over how financial institutions and regulators recover looted public resources. "Economic fugitives not only damage China's rule of law but also the country's financial stability, threatening the fates of banks and public confidence in the financial system."²

¹ The Fugitive Economic Offenders Act, No. 17 of 2018, Acts of Parliament, 2018 (India).

² "Fugitive Economic Offender" Arthapedia, available at http://arthapedia.in/index.php/Fugitive_Economic_Offender (last visited May 7, 2025).

Responding to this emerging paradigm, in 2018, India launched the Fugitive Economic Offenders Act (FEO Act), thereby establishing a strong legal basis to prevent economic offenders from absconding from the due process of law by being outside the jurisdiction of the Indian courts. At the same time, India's extradition mechanism -- primarily under the rubric of the Extradition Act of 1962 -- has got busy facilitating their return to face justice. "The main object of the FEO Act, as is evident from its statement of objects and reasons, is to ensure that the fugitive economic offenders not only return to India and render or produce themselves to face the process of law in respect of the offences they are alleging to have committed, but also return the 'proceeds of the crime' which they have siphoned off, so as to comply with justice to the people of India."³

This article critically examines the overlap of these two legal mechanisms, assesses their efficacy and constraints, and outlines the barriers to their enforcement. It discusses the interplay of the FEO Act and extradition treaties to establish a holistic mechanism to deal with the problem of fugitive economic offenders. The paper also examines high-profile cases that of Vijay Mallya and Nirav Modi to ascertain the actual challenges faced in operationalising these statutory frameworks.

FUGITIVE ECONOMIC OFFENDERS ACT, 2018

II. Legislative Background and Purpose

The Indian Parliament has passed the Fugitive Economic Offenders Bill and the same has been the recipient of the assent of the President of India on 31 July 2018. The Act was notified through an ordinance on April 21, 2018, prior to its introduction in the parliament.⁴ The Preamble to the Act provides that "the Fugitive Economic Offenders pose a serious threat to the financial health of the country and it is in the interest of all citizens of India to bring them back to India to face justice of law".⁵

³ "The Fugitive Economic Offenders Act, 2018: A Bad Law" SCC Online Blog, Dec. 10, 2022, available at <https://www.sconline.com/blog/post/2022/12/10/the-fugitive-economic-offenders-act-2018-a-bad-law/>.

⁴ The Fugitive Economic Offenders Act, No. 17 of 2018, Acts of Parliament, 2018 (India).

⁵ Ibid.

The said Act was enacted in the wake of a slew of economic offenders evading the reach of the Indian law by running out of the country. The Act's Statement of Objects and Reasons bring to the fore sins of such conduct like interference with investigations, drain of court time and undermining the rule of law. It also points out that a number of these cases pertain to non-payment of bank loans, which is adding to the bad loan problem of the Indian banking sector.⁶

Key Provisions and Mechanisms

Explanation. - For the purposes of this section, "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 has left India so as to avoid criminal prosecution;

1. This clause is included only for the purpose of importing the term 'videoconferencing', and is inapplicable since the said term has been defined in section 2 of the Code.

2. The words and comma "or such other audio-visual means as the Court may specify in this behalf" omitted by Act 20 of 2016, or (iii) the Special Court or the Court trying the offence is satisfied, on an application made before it by the Director, that an individual being abroad, refuses to return to India to face criminal prosecution.

A "fugitive economic offender" as per the FEO Act is anyone against whom an arrest warrant has been issued for a schedule offence and who:

(i) has absconded to evade the service of a criminal warrant against him or her in India.

(ii) is outside India and refuses to return to India to face criminal prosecution.⁷

Notably, the Act is limited only to offences involving the capacity of Rs. 100 crore or more, thereby setting a high point for its usage.⁸ This threshold ensures that the Act targets economic crimes that are high-value and poses significant impact to the economy of the country.

⁶ "The Fugitive Economic Offenders Act, 2018: A Bad Law" SCC Online Blog, Dec. 10, 2022.

⁷ "Fugitive Economic Offender" Arthapedia, April 24, 2018.

⁸ Ibid

The process of declaration as a Fugitive Economic Offender is as: — (a) Application The authorities at the Central Government, on the recommendation of the Director CDCBI, shall file an application before a Special Court to declare an individual as Fugitive Economic Offender.

The process of declaring a person as fugitive economic offender has been laid down in section 4, which begins with application to a Special Court (designated under the PMLA) containing the following: From a Director or any other officer not below the rank of a Deputy Director, a list of properties or the value of such properties believed to be the proceeds of a crime for which confiscation is sought, including a brief description of such properties by their nature, value, location or other relevant description; From the Director in the prescribed form, the reasons for the belief that an individual is a fugitive economic offender; Any other evidence. An application under this section shall contain reasons for the belief that an individual is a fugitive economic offender, information about his whereabouts, a list of properties believed to be proceeds of crime for which confiscation is sought, a list of all persons whom a Fugitive Economic Offender or any other person may have an interest and any other information and documents as may be prescribed in relation to such an individual.⁹

On receipt of an application of this nature, the Special Court may direct that the properties referred to, be attached. A notice is then served on the alleged menace, to attend at a certain place within six weeks. If the person comes up, the Act can be dropped. But if the person does not show up, the Court can still hear the application.¹⁰

On consideration of the application of the Director, the Special Court, upon being satisfied that an individual is a fugitive economic offender, may declare an individual as a fugitive economic offender and may order confiscation of: —

⁹ Section 4, The Fugitive Economic Offenders Act, 2018.

¹⁰ Deepak Agarwal, "The Fugitive Economic Offenders Act, 2018 in a Nutshell" LinkedIn, June 25, 2024, available at <https://www.linkedin.com/pulse/fugitive-economic-offenders-act-2018-nutshell-deepak-agarwal-qf9gc>.

(a) The property derived from or obtained through criminal activity in India or foreign territory; and

(b) Any other property or benami property in India or outside India owned by the FEO.¹¹

SPECIAL PROVISIONS

The FEO Act is distinctive for a number of key provisions that set it apart from other regimes:

Provisional attachment: Section 5(2) authorizes for the provisional attachment of the properties even prior to if an application and section 4 in the said property there is reason to believe that the property is proceeds of crime or it may be unavailable for confiscation.¹²

Disallowance of Civil Claims One of the more controversial provisions of the Act is Section 14, which empowers the Special Court to disallow a declared fugitive economic offender from taking any civil proceeding in any court or tribunal in India or defend any civil claim. This also applies to companies or LLPs where any person who has filed a complaint is a fugitive economic offender.¹³

INDIA'S EXTRADITION FRAMEWORK

Extradition Act, 1962: The Extradition Act of 1962 has been enacted keeping in mind the need to have a separate law that governs the process of extraditing individuals from abroad, whether to India or from India, to be carried out. "Extradition is the surrender by one state to another of a person desired to be tried for a crime as an act of international comity."¹⁴ Extradition is a legal procedure whereby an individual who committed a crime in one country is transported from a foreign country to the United States to be prosecuted or imprisoned for crimes committed within the requesting state.

¹¹ Section 12, The Fugitive Economic Offenders Act, 2018

¹² Deepak Agarwal, "The Fugitive Economic Offenders Act, 2018 in a Nutshell" LinkedIn, June 25, 2024.

¹³ Ibid.

¹⁴ "Extradition" Drishti IAS, April 17, 2021, available at <https://www.drishtiias.com/daily-news-analysis/extradition-4>.

The Act is applicable to the entire country and to all offences and acts which are classified as extraditable under relevant bilateral treaties or multilateral conventions done by India. This usually ensues with one country submitting an official request to another country through diplomatic channels where the request will be evaluated judicially according to standing legal standards.

The salient principles of extradition law

Indian Extradition law is based on a few principles that are in consonance with international law:

Reciprocity: This is the principle that what a country gives to its citizens, or to their natural or juridical persons, the other country to whose citizens they belong must be prepared to give. In the context of extradition, it can mean countries agreeing to extradite people to each other in exchange for reciprocal arrangements.¹⁵

Principle of Double Criminality: It is a necessary condition for extradition that the act in respect of which the extradition is requested constitutes a crime, both in the requesting and the requested State. If the crime is not also a crime in the requesting state, extradition might be denied.¹⁶

Double Jeopardy Rule: This rule does not allow one who has been tried and punished for the commission of a particular offence to be surrendered and tried a second time for the same offence.¹⁷

Specialty Principle: The specialty principle limits the receiving state to prosecute or punish the surrendered person only for the offense for which the surrender was granted, unless the

¹⁵ "Meaning, Purpose, Extradition Act of 1962 for UPSC" Textbook, Dec. 26, 2023, available at <https://testbook.com/ias-preparation/extradition>.

¹⁶ Ibid.

¹⁷ Ibid.

receiving state receives authorization from the surrendering state to prosecute for other offenses.¹⁸

INDIA'S EXTRADITION AGREEMENTS AND COVENANTS

Extradition Treaties have been signed between India and countless countries across the globe. India has extradition treaties with 47 countries as of the year 2024, which includes the United States of America, United Kingdom, Canada, United Arab Emirates, and Australia.¹⁹ 20 Second, India has "less formal" extradition arrangements with 12 other countries, among which are Antigua and Barbuda, Singapore, and Sri Lanka.²⁰

Those treaties usually contain lists of extraditable offences, cases in which extradition can be refused, procedural conditions for an extradition request, rules concerning temporary arrest, and the principle of specialty. There is an important difference between a treaty and an arrangement. Treaties are official, legal agreements that require parliamentary approval while arrangements are less formal agreements that might not be as enforceable.

Overlapping of The Fugitive Economic Offenders Act with Extradition Proceedings

Complementarity of the Two Frameworks

The FEO Act and India's extradition mechanism are two sides of the same coin in handling fugitive economic offenders from law enforcement perspective. Whereas the FEO Act gives teeth to the process of declaration of individuals as fugitive economic offenders and the subsequent confiscation of their properties within the geographical boundaries of India, extradition agreements offer the means to bring the fugitive economic offender to India – not virtually, but in flesh and blood.

Among other things, the FEO Act was in part also formulated to put pressure on fugitive economic offenders: If the threat of asset confiscation can be used to coerce them back into

¹⁸ Ibid.

¹⁹ "List of Indian extradition treaties" Wikipedia, March 17, 2024, available at https://en.wikipedia.org/wiki/List_of_Indian_extradition_treaties.

²⁰ Ibid.

India, so the logic goes, it would work in the country's favour. If that pressure is not strong enough, the direct mechanism of extradition exists to force them back home.²¹

This two-pronged approach is in recognition of the fact that to cater with the problem of fugitive economic offenders, it was realized that... it was necessary to provide for...constitutional backing to confiscating and forfeiting such property (the foreign asset) even before the person is declared as a fugitive economic offender. The primary pressure for enforcement which the FEO Act exercises is economic, that is, by threatening the wrongdoer's properties, while extradition is directly concerned with the wrongdoer's physical absence from the Indian territory.

Challenges in Coordination

However, even if quite compatible with each other, there are a few difficulties in the articulation between the two legal orders:

Extraterritorial limitations: Although the FEO Act purports to provide for forfeiture of properties situated outside India, such provisions are only effective if foreign jurisdictions cooperate and this is not invariably forthcoming.²²

Procedural Variations: Extradition procedures differ widely from country to country based on standards of evidence, procedural prerequisites, and time frames. These differences can add complexity in coordinating actions under the FEO Act with extradition.²³

Under FEO Act and extradition Declarations made under the FEO Act and the external process of extradition can be made at different times and proceed at different paces, possibly leading to situations where one process steps on or muddles the other.

²¹ "Fugitive Economic Offenders Act, 2018" Drishti IAS, July 9, 2020, available at <https://www.drishtias.com/daily-news-analysis/fugitive-economic-offenders-act-2018>.

²² R. Visali & T. Vaishali, "Extradition Laws in India: Addressing the Challenges of Economic Offenses" 4 IJIRL 847 (2023).

²³ Ibid.

Legal representation Individuals who are subject to proceedings in both systems and follow different legal strategies may sometimes create inconsistencies or complexities in the legal systems.

HIGH-PROFILE EXTRADITION CASES; SOME CASE STUDIES

- **The Vijay Mallya Case**

Vijay Mallya, former chairman of the United Breweries Group and owner of the now-defunct Kingfisher Airlines, is alleged to be involved with ₹9,000 crores (US\$1.3 billion) in bad loans from a consortium of Indian banks. He has been accused of financial offenses, including money laundering, fraud and embezzlement.²⁴

Mallya had fled India in 2016 and took shelter in the UK. The government of India made a formal extradition request in 2017, under the Extradition Act of 1962 and the UK-India Extradition Treaty. The case has now emerged as a watershed in India's campaign against fugitive economic offenders.

In the UK, multiple hearings and appeals took place in the extradition proceedings, with the Westminster Magistrates' Court ordering his extradition in December 2018. Lord Justice Aikens analysed prima facie case in extradition, citing evidence that Mallya had allegedly made false misrepresentations to secure loans which he then diverted them to purposes not stated.²⁵

"Proceedings have been initiated under the FEO (Foreign Exchange Operations) Act against Vijay Mallya whereas several properties connected to Mallya have also been attached." The case serves to illustrate the dynamic relationship between domestic law measures provided for by the Act, and the international extradition process, both the prospect of combined initiatives of effectiveness and the difficulties presented in their execution.

²⁴ Mallya v. India, [2020] EWHC 924 (Admin), available at <https://www.judiciary.uk/wp-content/uploads/2020/04/Mallya.APPROVED.pdf>.

²⁵ Ibid.

- **The Nirav Modi Case**

Diamond merchant Nirav Modi is alleged to have committed fraud worth ₹13,758 crore against Punjab National Bank (PNB) by using fake letters of undertaking. Modi left India in early 2018 before the full extent of the fraud became known.²⁶

Modi was arrested in London in March this year on a warrant issued by the Westminster court. During the UK court proceedings, there have been a number of marathon hearings with Modi's legal team making diverse set of objections, including those relating to what they claimed was political persecution and potential inhumane prison conditions in India. The UK court ruled in February 2021 to extradite him and the UK's Home Department signed off on the extradition in April 2021.²⁷

Modi had argued his mental health would worsen in prison in India, but the court found there was no clinching material to unequivocally indicate that Modi would be considered unfit to plead by Indian courts. The judge went along with the assurances of medical arrangements to be given to Modi from India.²⁸

At the same time, Modi was declared a fugitive economic offender under the FEO Act and properties valued at Rs. 329.66 crore were seized. This case is a perfect example of how the FEO Act can operate concurrently with the extradition process, offering an immediate, decisive action with respect to assets as the long extradition process works through the courts.²⁹

LEGAL AND DIPLOMATIC WRANGLES

Legal Hurdles in Extradition

The following are some of the legal issues that are often encountered in extradition proceedings concerning economic offenders:

²⁶ "Fugitive Economic Offenders Act, 2018" Drishti IAS, July 9, 2020.

²⁷ "UK Court Gives its Nod to Extradite Nirav Modi to India" BW Legal World, Feb. 26, 2021, available at <https://www.bwlegalworld.com/article/uk-court-gives-its-nod-to-extradite-nirav-modi-to-india-382048>.

²⁸ Ibid.

²⁹ "Fugitive Economic Offenders Act, 2018" Drishti IAS, July 9, 2020.

Dual criminality: The accused violation must be a crime in both countries, which can be problematic, especially in cases of sophisticated financial crimes, that can be narrowly defined in individual jurisdictions. Finding equivalence in legal definitions between various countries can be especially difficult in economic offences.³⁰

Political Offense Exception: Most extradition treaties contain an exception for individuals who have been charged with a political offense. Economic offences are generally non-political but the accused can seek to project them as such and try to squirm out from the clutches of the process of law. In Nirav Modi's case, too, the UK court dismissed the argument that there would be no justice if Nirav Modi were sent to India.³¹

Human Rights: The courts in the requested country may bar extradition if they determine that there are substantial grounds for believing that the person will be tortured, subjected to inhumane treatment, or denied a fair trial in the requesting state. Prison conditions in India have become an issue in a number of headline-grabbing extradition cases, with the Indian government having to make specific guarantees.³²

Standards of Evidence: Countries have different standards of proof for extradition. In some that may require only a prima facie case, but in others it may require more significant proof which can create a substantial barrier in complex economic offense cases where evidence can be located across several jurisdictions.³³

Diplomatic Considerations

Extradition is not just a legal process, but also has significant political implications:

Bilateral state relations: The level of success of extradition requests are arguably connected to the general health of bilateral state relations between the requesting and requested states.

³⁰ R. Visali & T. Vaishali, "Extradition Laws in India: Addressing the Challenges of Economic Offenses" 4 IJIRL 847, 850 (2023)

³¹ "UK Court Gives its Nod to Extradite Nirav Modi to India" BW Legal World, Feb. 26, 2021.

³² Ibid.

³³ R. Visali & T. Vaishali, "Extradition Laws in India: Addressing the Challenges of Economic Offenses" 4 IJIRL 847, 852 (2023).

Those nations that have better diplomatic relations, are able to have more success with extradition.³⁴

Diplomatic decision-making Countries may choose a different priority for an extradition request, the attention they give the request, the terms for which they will grant the request, or whether to make an extradition request based on the interests of the country's government, and particularly in the furtherance of their own foreign policy. financial falls crimes don't get the attention and urgency as violent crimes or terrorism.

Negotiation and compromise: Successful extradition is frequently the result of behind-closed-doors diplomatic negotiation and compromise that is not immediately apparent from the formal legal process.

SUGGESTIONS FOR IMPROVING THE FRAMEWORK

Legislative Amendments

Specific Embrace of Economic Crimes Explosive in Extradition Agreements: Extradition Act to specifically add economic offenses as dual criminality applies to crimes like money laundering, bank fraud, corporate fraud, and cybercrimes, therefor configure that these are explicitly extraditable crimes, consider these offenses when negotiating extradition treaty to be identified as crimes that are extraditable as per treaty and for which India can request extradition for a long haul.³⁵

Clarification for Dual Criminality for Economic Offences: Amend the Extradition Act to broaden the scope of economic offences that constitute possible grounds for extradition that require “dual criminality” in order to remove ambiguities and ensure that Canada is not a safe haven for some of the world’s most dangerous financial criminals, even when legal definitions do not match up perfectly.³⁶

³⁴ "Indian Extradition Act, 1962" BYJU'S, Dec. 6, 2022, available at <https://byjus.com/free-ias-prep/extradition/>.

³⁵ R. Visali & T. Vaishali, "Extradition Laws in India: Addressing the Challenges of Economic Offenses" 4 IJIRL 847, 858 (2023).

³⁶ Ibid

Increased Provisions for International Cooperation: Sections could be inserted within the FEO Act which would make it easier to coordinate with authorities in other jurisdictions for the purpose of seizure and forfeiture of assets in foreign countries, e.g., through mutual legal assistance provisions.

Procedural Reforms

Simplify Coordination Protocols: Implement clear guidelines regarding coordination between agencies handling domestic application of the FEO Act and agencies handling extradition requests, so that one process is supportive of the other, not obstructive.

Faster timelines: Introduce faster timelines for certain applications under both the frameworks for minimizing delay, specifically in cases of interim arrest in economic offenses where there is a likelihood of dissipation of assets.

Training specialty: specialized training for judges, public representatives and investigators on cases under the FEO Act and extradition matters, to improve their implementation in complex transnational cases.

Broadening the mutual legal assistance: Strengthening the existing framework for the effective use of mutual legal assistance takes into account the developments caused by globalization and the digitalization of information; strengthening the mechanism for executing letters of request from other countries and the provision of source of funds information and assistance in the recovery of stolen assets; pursuance of the existing mechanism for getting information from other countries in the form of witness statements for use in investigation and prosecution of cases with the very same purpose that is explicitly laid down in s.166 of the Act; 3.

3.Negotiation of New Extradition Treaties: Work towards completion of Extradition Treaties with countries where it is currently not available including countries where Indian economic offenders run to or their assets are stashed away.

Multilateral Efforts: Engage in and support multi-lateral efforts to combat transnational financial crimes and promote the repatriation of fugitives, including UN conventions against transnational organized crime and corruption.

CONCLUSION

Fugitive Economic Offenders Act, 2018, is a landmark move for the country in terms of cleaning up the menace of economic fugitives. In combination with extradition treaties, it is a potent mechanism to help ensure that such offenders are brought to book and their stolen funds restored.

But the balance of this two-pronged strategy is complicated by jurisdiction, procedural insecurities, and diplomatic minefields. The recent cases with Vijay Mallya, Nirav Modi etc. showcase the possibilities as well as challenges that can be encountered while implementing these legal frameworks.

In the long run, India must lay emphasis on a well-entrenched domestic anti-fugitive legislation and a robust international cooperation to make the wheel move more smoothly in dealing with fugitive economic offenders. This involves legislative changes clarifying the dual criminality test in the area of economic crime, procedural modifications to speed up the execution of temporary arrests and diplomatic efforts in order to improve the cooperation with the international partners.

In tackling these challenges, India can build a stronger platform that enables the recovery of stolen assets and acts as a deterrent to future offenses, and in-turn offer a stronger, more resilient integrity for its financial system and a more unequivocally rule of law based ecosystem. This symbiosis between the FEO Act and extradition mechanisms can form the basis for a successful strategy to combat economic offenses in India, if the legal and diplomatic challenges can be met in a balanced way.