

Fear of forfeiture: on the Fugitive Economic Offenders Bill

Given the apparent ease with which economic offenders flee India and cock a snook at the banking and judicial systems, the [proposed law to seize their wealth](#) is undoubtedly a welcome measure. In fact, given the public disquiet over the apparent impunity enjoyed by billionaire fraudsters living in the safety of foreign climes, any new law is likely to be viewed in a positive light. However, its success rides on the slim hope that the threat of confiscation of property will act as a serious deterrent to those seeking to flee or as a big incentive for fugitives to return. Legal provisions to confiscate the assets of offenders already exist, but these are regarded as somewhat inadequate. The Fugitive Economic Offenders Bill, which has been cleared by the Cabinet, aims to make up for the shortcomings and provide a fresh legal framework that would enable the confiscation of the property of those evading prosecution by fleeing the country or remaining abroad. From the provision in the Code of Criminal Procedure for attachment of the property of 'proclaimed offenders', to sections in Acts targeting smugglers, foreign exchange offenders and traffickers in narcotics, proceedings for forfeiture of property have been marked by shortcomings and procedural delays. But laws deemed draconian, such as the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, have not exactly been a success. Experience has shown that disposal of confiscated assets is not easy, especially at a price sufficient to recoup losses or pay off all creditors.

Under the [Fugitive Economic Offenders Bill](#), confiscation is not limited to the proceeds of crime, and extends to any asset owned by an offender, including benami property. Such clauses are liable for legal challenge, especially if there are third party interests and doubts about real ownership. Care must be taken to draft a law that is free from legal infirmities from the point of view of fundamental rights and due process. The government has justified not linking the forfeiture clause to criminal conviction by citing the principle enshrined in the UN Convention Against Corruption, which India ratified in 2011. The convention envisages domestic laws for confiscation of property without a criminal conviction in cases in which the offenders cannot be prosecuted for reasons of death, flight or absence. The Bill is reasonable in that a fugitive offender will cease to be one if he or she appears before court. There is a 180-day window during which the property will remain attached, with a provision for appeal against an order of confiscation. While the utility and effectiveness of laws are best assessed in the implementation, it is important to ensure they are fair and reasonable. The shortcomings in previous laws must be avoided, and the new legal regime impartially enforced.

Receive the best of The Hindu delivered to your inbox everyday!

Please enter a valid email address.

The draft of Assam's National Register of Citizens is a first step, but it opens up concerns

END

Downloaded from [crackIAS.com](#)

© [Zuccess App](#) by [crackIAS.com](#)