

The Fugitive Economic Offenders Bill is a welcome step

Nirav Modi is a fugitive from justice. His disappearing act complicates any serious attempt to recover the money that is due to banks and also hampers the criminal investigation. Yet, the far deeper impact is that citizens will continue to ask whether the rule of law applies to influential businessmen who have escaped to another country after defaulting. Such undermining of institutional trust in the rule of law is never a good sign. Thus, the news that the government is planning to introduce a new law against such economic offenders is welcome. In February 2017, in his Budget speech finance minister Arun Jaitley had said that there was a need for legislation to deal with economic offenders who have fled the country.

There have been several moves against economic offenders over the past few years — ranging from clear rules from the Reserve Bank of India on how to identify wilful defaulters to the new insolvency framework that empowers creditors to take control of the assets of defaulters. These policies assume that the economic offender remains within the country. The existing rules or laws are of little use in case the economic offender remains outside the jurisdiction of Indian law. Trying to co-ordinate with the legal systems in other countries can take too much time.

The Fugitive Economic Offenders Bill seeks to do two things. First, any property owned in India by the economic offender can be confiscated, as is currently allowed in the case of those accused of money laundering. Second, it will ensure that the confiscation will not face any civil claims of managers, shareholders or other partners. The government has said that the bill will only cover cases where the total claims are more than Rs 100 crore, to allow the courts to focus on the meaningful cases.

However, the bill should not be seen as an alternative to making runaway defaulters face the Indian courts. For example, the sale of a mansion in Goa or the attachment of a few retail outlets is only a limited form of punishment in cases where the economic fugitive has assets spread across the world, often through a web of holding companies registered in tax havens. It will do little to rebuild public trust in the rule of law. The far bigger task of making those who have escaped abroad come back to face Indian law will continue to remain a challenge.

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