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Lok Sabha passes Fugitive Economic Offenders Bill

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The Fugitive Economic Offenders Bill, 2018 was passed by Lok Sabha without any amendments proposed by the Opposition to replace the ordinance on the same subject.

- The Fugitive Economic Offenders Bill, 2018 seeks to confiscate properties of economic offenders who have left the country to avoid facing criminal prosecution.
- Offences involving amounts of Rs. 100 crore or more fall under the purview of this law.

Fugitive Economic Offender

- A fugitive economic offender has been defined as a person against whom an arrest warrant has been issued for committing any offence listed in the schedule of the proposed bill.
- Further the person has:
 - Left the country to avoid facing prosecution.
 - Refuses to return to face prosecution.
- Some of the offences listed in the schedule of the bill are-counterfeiting government stamps or currency, cheque dishonour for insufficiency of funds, money laundering, transactions defrauding creditors etc.
- The Bill allows the central government to amend the schedule through a notification.

Reasons to bring Economic Offenders Bill

- There have been several instances of economic offenders fleeing the jurisdiction of Indian courts, anticipating the commencement, or during the pendency of criminal proceedings.

- The absence of such offenders from Indian courts has several deleterious consequences like:
 - It hampers investigation in criminal cases,
 - It wastes precious time of courts of law,
 - It undermines the rule of law in India,
 - Non-repayment of bank loans worsens the financial health of the banking sector in India.
- The existing civil and criminal provisions in law are not entirely adequate to deal with the severity of the problem. It was therefore, felt necessary to provide an effective, expeditious and constitutionally permissible deterrent to ensure that such actions are curbed.
- Non conviction based asset confiscation for corruption related cases are enabled under provisions of United Nations Convention against Corruption which India ratified in 2011. The Bill adopts this principle.

United Nations Convention against Corruption

- The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument.
- It was adopted by the General Assembly in 2003 and entered into force on December 14, 2005.
- The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange.

Salient features of the Bill

- To declare a person an FEO, an application will be filed in a Special Court (designated under the Prevention of Money-Laundering Act, 2002) containing details of the properties to be confiscated, and any information about the person's whereabouts.
- The Special Court will require the person to appear at a specified place at least six weeks from issue of notice. Proceedings will be terminated if the person appears.
- Attachment of the property of a fugitive economic offender.
- Confiscation of the property of an individual declared as a fugitive economic offender resulting from the proceeds of crime.
- Confiscation of other property belonging to such offender in India and abroad including benami property.
- Disentitlement of the fugitive economic offender from defending any civil claim.
- All cases under the proposed law will be tried under the Prevention of Money Laundering (PMLA) Act and the administrator will sell the fugitive's properties to pay off the lenders.
- The proposed law will have an overriding effect over all other pieces of legislation.

Impact

- The Bill is expected to re-establish the rule of law with respect to the fugitive economic offenders as they would be forced to return to India to face trial for scheduled offences.
- This would also help the banks and other financial institutions to achieve higher recovery from financial defaults committed by such fugitive economic offenders, improving the financial health of such institutions.
- It is expected that the special forum to be created for expeditious confiscation of the proceeds of crime, in India or abroad, which would coerce the fugitive to return to India to submit to the jurisdiction of courts in India to face the law in respect of scheduled offences.

Challenges

- The Rs. 100 crore threshold would allow many other offenders to go scot-free.
- The blanket ban on offenders contesting the confiscation of their properties through civil suits may not survive the judicial review. An absolute ban is contrary to the basic tenets of justice and fair play, besides being in violation of the Indian Constitution.
- Sale of property of a fugitive economic offender without adjudicating after a proper trial would amount to violation of the settled principle under the Constitution that one is considered innocent unless proven guilty.
- Deterioration in value of seized assets and finding suitable buyers are some other concerns around the proposed law.

Way forward

- The Bill should provide for time limits for disposal and encashment of confiscated property, separate limits for movable-immovable property and running business.
- Any property which would be subject to valuation loss over a period of time must be disposed of quickly.