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Due Process concerns under the Fugitive Offenders Act 2018: A Constitutional Analysis in Light of Article 14, 19 and 21

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ABSTRACT

The Fugitive Economic Offenders Act, 2018 was enacted to deal with a rising issue of economic fugitives absconding from India to elude prosecution in criminal courts and potential liability. The act authorizes the government to confiscate property of those declared as fugitive economic offenders and limits their entitlement to civil remedies. As stated above, while the act provides the opportunity to enhance economic governance and accountability, it has presented substantial Due Process and basic rights Concerns within the context of the Indian Constitution.

This paper will examine the constitutional legitimacy of the act, especially given the constraints set forth in Articles 14, 19 and 21 of the Constitution of India. The paper will consider if the provisions concerning seizure and confiscation of property, prohibition from seeking or defending civil actions and the expansive discretion provided to enforcement agencies meet the criteria of fairness, reasonableness and non-arbitrary behavior established through Judicial precedent. Further, this paper will assess how the act affects the principle of equality before law, the freedom to engage in a profession, presumption of innocence and access to justice. Ultimately, the paper posits that although fighting against economic offenses is a legitimate governmental goal, the provisions of the Constitution cannot be sacrificed to achieve that goal. Therefore, a balanced approach that includes both procedural safeguards and proportionality is needed so as to maintain the rule of law and constitutional morality.

Keywords: *fugitive economic offenders act, 2018; Due Process; article 14; Article 21; constitutional law*

I. INTRODUCTION

Transnational economic crimes and flight from India of many financially prominent individuals involved in such offenses led to a critical need for a robust legislative framework that could

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assist in dealing with economically-fleeing (fugitive) offenders who evade criminal prosecution in Indian courts. The Indian legislature responded to this necessity by enacting the Fugitive Economic Offenders Act, 2018 ("the act") in order to deter such economic offenders from leaving India and recover proceeds obtained illegally. Pursuant to the act, authorities are empowered to seize and confiscate properties of individuals designated as "fugitive economic offenders" and restrict their access to civil litigation. Although the act was enacted to safeguard financial stability and uphold the rule of law, many of its provisions raise significant constitutional issues pertaining to fair procedures and Due Process. Thus, the act's provisions establishing broad discretion for enforcing authorities, confiscating property prior to conviction and limiting access to justice pose challenges under Articles 14, 19 and 21 of the Constitution of India. These three articles provide respectively for equality before the law, protection for fundamental rights and the right to life and personal liberty through fair, just and reasonable procedure. Accordingly, this article provides a constitutional examination of Due Process issues arising out of the Fugitive Economic Offenders Act, 2018.

II. LEGISLATIVE BACKGROUND AND OBJECTIVES OF THE ACT

The Fugitive Economic Offenders Act, 2018 was enacted in order to respond to an increasingly common phenomenon where economic offenders flee India in order to evade criminal prosecution and potential financial liability. The act was enacted following a number of major financial scandals perpetrated by individuals charged with large scale economic crimes who left India. Its purpose is to dissuade absconding offenders from fleeing from India, protect financial stability and allow for recovery of proceeds of crime through confiscation of properties. The legislation is applicable to offenses exceeding rupees one hundred crores (approximately usd \$1.5 million) and enables authorities to designate individuals as fugitive economic offenders and limit their entitlement to civil remedies until they agree to subject themselves to jurisdiction in India.

III. THE CONCEPT OF DUE PROCESS IN INDIAN CONSTITUTIONAL JURISPRUDENCE

Due Process in Indian constitutional law developed considerably subsequent to *Maneka Gandhi v. Union of India*. Prior thereto, Article 21 was interpreted narrowly; subsequently the court held that any law affecting a citizen's right to life or personal liberty would have to utilize a method of Due Process which would be considered fair, reasonable and just. In present-day India, Due Process encompasses elements of substantive fairness (equality), non-arbitrariness (non-discrimination) and procedural safeguards established under Articles 14, 19 and 21 individually but collectively. The doctrine protects citizens against excessive State interference

as well as preventing arbitrary deprivations of their rights. Review by courts is key in protecting constitutional morality as well as procedural justice.

IV. ARTICLE 14 ISSUES: EQUALITY AND NON-ARBITRARINESS

Article 14 establishes equal protection for all citizens and prohibits discriminatory action by the State. The Fugitive Economic Offenders Act, 2018 presents Concerns regarding broad discretion conferred upon investigating authorities and disproportionate seizure provisions. The act allows for seizure and confiscation of property even prior to criminal convictions contrary to principles of fairness and equal treatment. Furthermore, Section 14 limits civil legal entitlements of declared offenders by restricting their capacity to institute or defend civil claims in Indian courts. Such provisions may constitute manifest arbitrariness and undermine the rule of law. Consequently, the constitutional validity of the act will depend on whether its Restrictions fulfill requirements of reasonableness and non-arbitrariness.

A. Excessive Executive Discretion

The act confers considerable discretion upon investigation agencies for attaching and confiscating property based upon "reasonable belief". Such unrestricted authority without proper procedural protections or adequate supervision by independent tribunals create risks of abuse of power by enforcement authorities, which may contravene article 14 that prohibits excessive use of discretionary authority by State officials.

B. Manifest arbitrary action

Pre-conviction confiscation of property may cause severe civil penalties without completing criminal prosecutions. Measures constituting such severe civil consequences without Judicial findings of guilt may be deemed manifestly arbitrary since they impose harsh civil consequences without Judicial determinations of guilt. Consequently, the act poses serious constitutional issues under article 14 prohibiting arbitrary State action.

C. Uniform treatment

Only cases involving economic offenses worth more than rupees one hundred crores fall within the scope of the act thus creating classifications among offenders. Critics assert that regardless of size, procedural protections should continue to apply uniformly. Classification into different categories based exclusively on monetary thresholds may create problems with respect to equal treatment under article 14.

D. Section 14 denial of civil remedies for offenders declared as fugitive economic offenders

Section 14 denies declared fugitive economic offenders from instituting or defending civil actions in Indian courts. Limiting access to civil legal recourse may detract from equal treatment before the law under article 14 as well as access to justice under Article 21.

V. ARTICLE 19 ISSUES: RESTRICTIONS ON ESSENTIAL FREEDOMS

Article 19 sets forth certain essential freedoms including engaging in any profession or occupation or conducting any trade or commerce. The Fugitive Economic Offenders Act, 2018 impinges upon these freedoms by way of asset forfeiture as well as Restrictions placed upon declared fugitive economic offenders. Such Restrictions may have adverse effects on professional practices, commercial dealings as well as financial independence. However, reasonable Restrictions can be placed on such freedoms in pursuit of public interest Objectives but such must comply with appropriate constitutional tests for proportionality and fairness. The act similarly impacts freedom of movement by requiring accused persons to return to India in order to protect their legal interests. Each restriction on such freedoms necessitates careful scrutiny under constitutional law in order to protect fundamental freedoms and civil liberties.

A. Impact on Profession and Business

Forfeiture of assets and Restrictions placed upon fugitive economic offenders pursuant to the act can prevent them from continuing their professions or businesses. Such Restrictions directly interfere with freedom provided under Article 19(1)(g). For purposes of remaining constitutionally valid, such Restrictions must be reasonable, proportional to legitimate public interest goals.

B. Effect on Freedom of Movement

While the act does not prohibit movement, its coercive features can compel accused persons to return to India in order to avoid forfeitures and other legal disabilities. Indirect Restrictions on freedom of movement can affect personal autonomy as well as physical mobility. The constitutional validity of each feature depends upon whether such Restrictions are proportional as well as necessary for legitimate governmental interests.

C. Chilling Effect on Corporate Rights

Asset forfeitures as well as Restrictions established in Section 14 can negatively impact companies associated with declared fugitive economic offenders. Such can harm stockholders, employees and third-party entities. This can establish a chilling effect on business operations and corporate governance resulting in Concerns about proportionality as well as protection afforded by article 19 regarding economic freedoms.

VI. ARTICLE 21 ISSUES: LIFE, LIBERTY AND FAIR PROCEDURE

Article 21 affords protection for life and personal liberty except by virtue of a procedure that is fair, just and reasonable. the Fugitive Economic Offenders Act, 2018 raises serious Due Process Concerns related to fairness in proceeding. Pre-conviction forfeiture of property as well as limited access to courts can diminish presumption of innocence as well as principles of a fair trial. The extraordinary discretion granted to authorities carries risks that individuals' rights to legal property interests can be arbitrarily deprived without adequate safeguards. As stated previously, constitutional jurisprudence holds that Restrictions imposed by the State must conform with doctrines of proportionality and fairness in order for individuals' dignity, liberty as well as their right to seek justice.

A. Violations of Fair Trial Principles

Permitting confiscation of property prior to conclusion of criminal trials weakens presumption of innocence. Harsh civil consequences imposed without ultimate judgment may prejudice defendants and compromise fair trial guarantees. Each provision raises significant constitutional issues concerning procedural fairness as well as protection afforded by Article 21 for personal liberty.

B. Access to Justice

Section 14 prohibits fugitive economic offenders from bringing or defending civil actions thereby diminishing their access to Judicial remedies. Access to justice is a core element required by Article 21 as part of upholding the rule of law. Prohibiting individuals from exercising civil rights without being convicted poses significant Due Process Concerns under Articles 14 and 21

C. Procedural Due Process

Procedural Due Process (Article 21) mandates that any State action that affects a person's Liberty or Property interest shall be fair, reasonable and Non-Arbitrary. However, critics claim that the law has an Overriding priority on Speedy Enforcement rather than providing the minimum acceptable level of due process protection. The limited opportunity for a person to dispute/contest confiscation along with the Unrestricted Executive Discretion could possibly deny the right to Constitutional Protection of Fairness as per Article 14, Article 19 and Article 21.

Comparative Constitutional Perspective: Several countries have enacted laws to address economic fugitives and financial crimes; although many of those laws include strong procedural

safeguards and judicial oversight. In jurisdictions like the U.K., and the U.S., there is a high level of review over confiscation measures to protect fair trial rights. International human rights norms place a great deal of emphasis on protecting against arbitrary or excessive punishment, guaranteeing access to justice, and providing due process.

Compared to other systems (U.S. and UK), the Fugitive Economic Offenders Act 2018 is more restrictive, more focused on enforcement and less protective of individual liberties.

VII. JUDICIAL RESPONSES AND CONSTITUTIONAL CONCERNS

Indian courts typically recognize the necessity of harsher legislation to combat economic offenses and to protect the stability of the financial system. Although judicial decisions often emphasize public interest, deterrence, and the State's obligation to prevent financial fraud when deciding issues related to economic legislation, they also maintain that in the case of serious economic offenses, individual liberty interests and procedural fairness must still be respected.

Therefore, the Fugitive Economic Offenders Act 2018 has raised several questions about its constitutionality, specifically regarding: 1) the authority of the government to confiscate assets prior to conviction of a defendant; 2) the breadth of executive power granted to the government through this statute; and 3) the limitation on access to civil remedies for defendants. Some critics believe that certain sections of the Act (such as Section 14) violate both the principle of equal treatment under Article 14, and the right to a fair hearing as well as access to justice protected by Article 21.

It can be expected that courts will determine if the limitations created by the Act meet two requirements: first, the doctrine of proportionality; second, the requirement of non-arbitrariness articulated in constitutional jurisprudence. Review under Articles 32 and 226 provides a critical check on the possibility of abuse of legislative authority, while ensuring compliance with constitutional values and the Rule of Law.

VIII. CRITICAL EVALUATION OF THE ACT

The Fugitive Economic Offenders Act 2018 demonstrates a firm commitment by the State to confronting financial wrongdoing and to compelling offenders to account for their wrong doing before the legal authorities. However, the Act prioritizes enforcement and prevention at the expense of constitutional protections and due process. The Act creates a number of significant risks including: 1) wide-ranging confiscation powers; 2) denying civil remedy options; and 3) imposing penalties upon individuals before they have been convicted of an offense. These features create real risks of arbitrariness and proportionality. What is needed is a balance

between promoting good economic management practices and avoiding violations of fundamental rights and due process protections.

IX. CONCLUSION

The Fugitive Economic Offenders Act 2018 was passed into law to combat a rapidly increasing problem in India - namely that of economic offenders who flee India in order to avoid being prosecuted or held financially accountable for their actions. While it is legitimate for the State to strengthen its economic governance structures and promote accountability among economic actors, the Act presents several important constitutional concerns relative to due process, fairness, and fundamental rights protections. Specifically, sections of the Act which relate to: 1) confiscating property; 2) granting broad discretion to executives; and 3) eliminating access to civil remedies must be carefully examined within Articles 14, 19, and 21.

The Indian Supreme Court has consistently ruled that all governmental acts must be conducted fairly, reasonably, justly, and in a manner that is proportional. Serious economic wrongdoing may justify stricter forms of legal response, but such responses should never negate constitutional obligations and respect for the Rule of Law. Consequently, it is essential that a balanced reading of the Act occur in order to reconcile public interest with private freedoms. It is equally crucial that strong judicial review exists to ensure that any anti-economic-crime efforts continue to reflect democracy and constitutionalism.

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