

Controversial Cases Under the Fugitive Offenders Act in India: A Critical Analysis

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Abstract:

India has witnessed several high-profile cases where economic offenders and fugitives have fled the country to evade prosecution. The Fugitive Economic Offenders Act (FEOA), 2018, was introduced to confiscate the properties of such offenders and expedite their extradition. However, its implementation has been fraught with legal battles, diplomatic hurdles, and controversies. This article critically examines some of India's most controversial fugitive cases, analysing the effectiveness of the FEOA and the challenges faced in bringing offenders to justice.

Introduction

India has witnessed several high-profile cases where economic offenders and fugitives have fled the country to evade prosecution. The Fugitive Economic Offenders Act (FEOA), 2018, was introduced to confiscate the properties of such offenders and expedite their extradition. However, its implementation has been fraught with legal battles, diplomatic hurdles, and controversies. This article critically examines some of India's most controversial fugitive cases, analysing the effectiveness of the FEOA and the challenges faced in bringing offenders to justice.

Key Controversial Cases

1. Vijay Mallya: The King of Good Times Turns Fugitive

Vijay Mallya, once celebrated as India's "King of Good Times" for his flamboyant lifestyle and business empire, became one of the country's most infamous fugitives after fleeing to the United Kingdom in March 2016. His departure followed the collapse of Kingfisher Airlines, which had defaulted on loans worth ₹9,000 crore borrowed from a consortium of Indian banks. The fallout from this financial debacle left public-sector banks grappling with massive losses. At the same time, Mallya continued to live luxuriously in the UK, sparking public outrage and raising serious questions about corporate accountability in India. His case became emblematic of India's challenges in extraditing high-profile economic offenders from foreign jurisdictions, particularly those with stringent legal protections.

India's efforts to bring Mallya back faced significant delays due to the complex and protracted nature of the UK's extradition process. Although Indian authorities submitted an extradition request shortly after his escape, the legal proceedings stretched over five years, with Mallya's defense team exploiting every available avenue to stall the process. In December 2018, a UK court ruled that he could be extradited. Still, Mallya filed multiple appeals, arguing that he faced political persecution and that prison conditions in India violated his human rights under UK law. These arguments, commonly used by fugitives fighting extradition, prolonged the case until the UK High Court finally rejected his appeal in April 2021, upholding the extradition order. However, Mallya has sought further legal recourse, including a potential appeal to the European Court of Human Rights (ECHR), leaving his return to India limbo.

One of the most contentious aspects of the Mallya case has been the UK's strict adherence to human rights considerations, which often clash with India's judicial and penal systems. Mallya's lawyers successfully leveraged concerns over overcrowding and healthcare in Indian prisons to delay proceedings despite assurances from Indian authorities about his detention conditions. This highlights a recurring obstacle in India's extradition cases—foreign courts' skepticism about India's prison facilities and legal safeguards. While India has strengthened its arguments in subsequent cases (such as those of Nirav Modi and Mehul Choksi), the Mallya saga exposed gaps in diplomatic preparedness and evidentiary presentation when dealing with Western legal systems.

Another critical issue has been the incomplete recovery of public funds lost in the Kingfisher Airlines debacle. While Indian agencies, including the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI), have seized some of Mallya's assets—such as his villa in Goa, luxury cars, and bank accounts—the total recovered amount remains a fraction of the outstanding debt. The slow pace of asset liquidation and legal challenges in multiple jurisdictions have hindered full restitution. Moreover, Mallya's opaque financial web, involving shell companies and offshore holdings, has complicated efforts to trace and reclaim the entirety of the defrauded sum. This underscores the need for more robust international cooperation on financial crimes and faster mechanisms for asset recovery under laws like the Fugitive Economic Offenders Act (FEOA), 2018.

The Vijay Mallya case remains a stark reminder of the intersection of corporate malfeasance, legal loopholes, and diplomatic challenges in the pursuit of justice. While his extradition order marked a symbolic victory for India, the prolonged battle reflects systemic issues—delays in legal processes, reliance on foreign courts' interpretations of human rights, and difficulties in recovering stolen wealth. For India, the lessons are clear: stronger financial oversight, faster judicial resolutions, and better-coordinated international legal strategies are essential to prevent similar cases in the future. Until then, Mallya's saga will continue to serve as a cautionary tale about the perils of unchecked corporate borrowing and the complexities of bringing economic offenders to justice.

Critical Issues:

- **Delayed Justice:** Extradition proceedings were prolonged due to legal technicalities.
- **Diplomatic Hurdles:** The UK's stringent human rights laws complicated India's efforts.
- **Asset Recovery:** While some assets were seized, full recovery remains pending.

2. Nirav Modi: The Billion-Dollar PNB Scam Accused

Nirav Modi, once a celebrated diamond magnate, became the face of one of India's most notorious banking frauds after the Punjab National Bank (PNB) scam worth ₹14,000 crore came to light in 2018. Modi and his associates allegedly colluded with bank officials to secure fraudulent Letters of Undertaking (LoUs), which were used to obtain massive foreign credit without adequate collateral. By the time the scam was uncovered, Modi had already fled India, leaving behind a trail of financial ruin and exposing glaring weaknesses in India's banking oversight. His escape triggered a global manhunt, culminating in his arrest in London in 2019, where he has since waged a protracted legal battle to avoid extradition.

One of the most striking aspects of Modi's case has been his strategic exploitation of legal loopholes in the UK's extradition process. His defense team argued that his mental health had deteriorated due to the prolonged legal battle and that he faced a high risk of suicide if extradited. Additionally, they raised concerns about Mumbai's Arthur Road Jail conditions, claiming they violated human rights standards—an argument previously used by other fugitives like Vijay Mallya. While the UK High Court ultimately approved his extradition in 2023, dismissing these claims, Modi has continued to delay the process through appeals, leaving him in legal limbo. This tactic highlights how wealthy defendants can leverage procedural delays and human rights arguments to stall justice, even when evidence of their crimes is overwhelming.

Beyond the extradition battle, the Nirav Modi case underscores deep-seated vulnerabilities in India's banking sector. The PNB scam revealed a shocking lack of oversight, with rogue employees able to bypass internal controls for years without detection. The absence of real-time auditing and the failure to link banking systems with the SWIFT network allowed fraudulent transactions to go unnoticed, raising serious questions about regulatory complacency. While reforms like the Fugitive Economic Offenders Act (FEOA), 2018 were introduced to deter such crimes, the fact that a fraud of this scale could occur suggests that institutional safeguards remain inadequate.

Another critical issue has been the slow and incomplete recovery of Modi's global assets. Despite provisions under the FEOA, which allow for the confiscation of a fugitive's properties, the process has been mired in legal and logistical challenges. Modi's assets, spread across Hong Kong, the UAE, the UK, and the US, include high-value diamonds, real estate, and bank accounts, but their seizure has been hampered by jurisdictional complexities and legal resistance. While Indian authorities have made some progress, including the auction of his seized properties, a significant portion of the defrauded amount remains unrecovered. This delay not only denies justice to the affected banks but also sends a troubling message about the difficulties in holding economic offenders accountable.

The Nirav Modi saga is more than just a high-profile extradition case—it is a cautionary tale about financial fraud, regulatory failures, and the challenges of transnational justice. While his eventual extradition may provide a sense of closure, the case underscores the need for stronger banking reforms, faster asset recovery mechanisms, and better international legal cooperation. Until these systemic issues are addressed, India will continue to face an uphill battle in bringing fugitive economic offenders to justice and recovering stolen wealth. The case also serves as a reminder that legal loopholes and

procedural delays often favor the wealthy, allowing them to evade accountability while victims and taxpayers bear the cost.

Critical Issues:

- **Legal Exploits:** Modi's defense used health and prison conditions to delay extradition.
- **Weak Banking Oversight:** The scam exposed lax regulatory mechanisms in Indian banks.
- **Incomplete Asset Seizure:** Despite FEOA provisions, recovering his global assets has been slow.

3. Mehul Choksi: The Antigua Escapee

Mehul Choksi, a fugitive diamantaire and key accused in the Punjab National Bank (PNB) scam, symbolizes the legal and diplomatic hurdles India faces in extraditing high-profile economic offenders. After allegedly defrauding Indian banks of over ₹13,000 crore, Choksi secured Antiguan citizenship in 2017 under the Caribbean nation's Citizenship by Investment Program (CIP), effectively shielding himself from immediate extradition to India. This strategic move complicated India's legal efforts, as Antigua does not extradite its own citizens without exhaustive due process. Choksi's case underscores how wealthy fugitives exploit "golden passport" schemes to evade justice, forcing India into prolonged legal battles in foreign jurisdictions with differing extradition standards.

The controversy took a dramatic turn in May 2021 when Choksi was mysteriously abducted from Antigua and transported to Dominica under suspicious circumstances. Reports suggested the involvement of private operatives, possibly linked to an unauthorized sting operation aimed at forcibly returning him to India. The incident sparked international scrutiny, with Choksi's legal team alleging torture and state-sponsored abduction, while Indian authorities denied any official involvement. The Dominica High Court ultimately blocked his extradition, citing procedural irregularities and lack of due process. This botched operation failed to secure Choksi's return and damaged India's diplomatic credibility, raising ethical and legal concerns about extraterritorial enforcement actions.

Despite India's persistent efforts, Antigua has yet to approve Choksi's extradition, prolonging a legal stalemate highlighting the sluggishness of international judicial cooperation. Antiguan authorities have cited ongoing legal reviews and the need for conclusive evidence that meets their domestic standards—a recurring obstacle in India's extradition cases. Meanwhile, Choksi has leveraged legal loopholes, including claims of political persecution and health issues, to delay proceedings.

Critical Issues:

- **Dual Citizenship Loophole:** Choksi exploited investment citizenship programs to evade extradition.
- **Failed Sting Operation:** The alleged kidnapping attempt backfired, damaging India's diplomatic standing.
- **Slow Legal Process:** Antigua has not yet extradited him despite India's requests.

4. Sanjay Bhandari: The Arms Dealer and Political Connections

Sanjay Bhandari, accused of tax evasion and arms deals, fled to the UK in 2016. India's extradition request faced delays due to insufficient evidence as per UK standards. The case also raised concerns about political patronage in defense deals.

Critical Issues:

- **Evidentiary Challenges:** India struggled to meet the UK's strict documentation requirements.
- **Political Links:** Allegations of high-profile connections slowed investigations.

One of the major stumbling blocks in Bhandari's extradition has been the evidentiary standards demanded by British courts. Unlike India's legal system, where investigations can sometimes rely on broader inferences, UK extradition laws require meticulously documented proof that meets strict admissibility criteria. Indian agencies, including the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI), reportedly failed to present evidence in a format acceptable to UK courts, leading to prolonged delays.

The delays in Bhandari's extradition also reflect broader concerns about the UK's role as a haven for wealthy fugitives seeking to evade justice. While the UK and India have an extradition treaty, the lengthy appeals process and high burden of proof often work in favor of the accused, allowing them to prolong legal battles for years. Bhandari's legal team has reportedly used these procedural loopholes to stall proceedings, even as Indian agencies scramble to strengthen their case. Recent developments, including rejecting some of Bhandari's appeals in UK courts, suggest that India may eventually succeed. Still, the prolonged fight underscores the need for better coordination between investigative agencies and international legal experts.

Ultimately, the Sanjay Bhandari case is a litmus test for India's ability to tackle white-collar crime and corruption with international dimensions. It exposes weaknesses in evidence collection, legal preparedness, and the potential influence of political networks in high-stakes investigations. Until India streamlines its prosecution mechanisms and ensures that political connections do not derail accountability, cases like Bhandari's will continue to face frustrating delays. Moreover, the case serves as a reminder that without systemic reforms, the UK and other jurisdictions with robust legal safeguards may remain attractive destinations for those seeking to escape justice in India.

Critical Analysis of the Fugitive Economic Offenders Act (FEOA), 2018

The Fugitive Economic Offenders Act (FEOA), enacted in 2018, represents a significant legislative effort by the Indian government to combat the growing problem of high-value economic offenders fleeing the country to evade prosecution. Designed to address the shortcomings in existing legal frameworks, the FEOA provides for the confiscation of properties belonging to fugitives and aims to deter others from attempting similar escapes. However, despite its strong legislative intent, the implementation of the FEOA has revealed several structural and procedural challenges that undermine its effectiveness. This analysis critically examines the FEOA's provisions, its successes in high-profile

cases, the persistent loopholes that hinder its enforcement, and potential reforms to strengthen its application.

Legal Framework and Key Provisions

The FEOA defines a Fugitive Economic Offender (FEO) as an individual against whom an arrest warrant has been issued for a scheduled offense involving at least ₹100 crore and who has left India to avoid prosecution. Once declared an FEO by a Special Court under the Prevention of Money Laundering Act (PMLA), the offender's properties—both in India and abroad—can be confiscated by the government. Notably, the Act bars the offender from filing or defending any civil claims in Indian courts until they submit to the jurisdiction. Additionally, the FEOA mandates that cases be resolved within six months from the date of application, a provision intended to expedite justice and prevent prolonged litigation.

Strengths of the FEOA

One of the most significant strengths of the FEOA is its emphasis on asset confiscation, which serves as a powerful deterrent against economic offenses. By targeting the financial gains of fugitives, the law ensures that fleeing the country does not provide an escape from accountability. For instance, the attachment of Vijay Mallya's assets worth ₹13,000 crore under the FEOA created substantial pressure on him to engage in settlement negotiations with Indian banks. The Act also facilitates the recovery of assets located abroad through mutual legal assistance treaties (MLATs), though this process remains fraught with challenges. Another notable advantage is the provision for fast-track adjudication, which theoretically prevents cases from languishing in courts for years. The swift attachment of Nirav Modi's properties in 2019 demonstrated the potential of this mechanism when implemented effectively.

Loopholes and Implementation Challenges

Despite its strengths, the FEOA has faced significant hurdles in practice. One of the most pressing issues is the delay in extraditing fugitives due to legal and diplomatic obstacles. Foreign courts, particularly in the UK, often prioritize concerns over prison conditions and human rights, leading to protracted legal battles. For example, Nirav Modi's extradition was delayed due to his claims of mental health issues, while Mehul Choksi exploited his Antiguan citizenship to evade deportation. These cases highlight the limitations of the FEOA in overcoming jurisdictional barriers.

Another major challenge is the ineffective recovery of overseas assets. While the FEOA provides for the confiscation of foreign properties, enforcement remains weak due to a lack of cooperation from tax havens like Switzerland and the UAE and complex legal procedures in foreign jurisdictions. Reports indicate that only a fraction of Vijay Mallya's overseas assets have been recovered, underscoring the difficulties in executing cross-border seizures.

The FEOA's narrow scope also limits its applicability. The law targets only financial frauds such as bank scams and money laundering, leaving out politically connected offenders and non-economic fugitives involved in crimes like terror financing. Furthermore, the Act struggles to address the benami holdings, where fugitives transfer assets to family members or shell companies to avoid confiscation.

This loophole significantly weakens the law's ability to dismantle the financial networks of economic offenders fully.

Recommendations for Reform

To enhance the effectiveness of the FEOA, several reforms are necessary. First, India should strengthen its extradition treaties and improve diplomatic coordination to expedite the return of fugitives. Second, the government must invest in better enforcement mechanisms for overseas asset recovery, including increased cooperation with international agencies. Third, the scope of the FEOA should be expanded to cover politically exposed persons and non-economic offenses. Finally, stricter measures against benami transactions and improved investigative capabilities would ensure that the law achieves its intended deterrent effect.

Conclusion

India's Fugitive Economic Offenders Act is a strong legislative tool, but its execution faces legal, diplomatic, and procedural challenges. High-profile cases like Mallya, Nirav Modi, and Choksi highlight systemic flaws in extradition treaties, banking oversight, and political accountability. Strengthening international cooperation, faster judicial processes and stricter financial monitoring are essential to deter future fugitives.

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