



FUGITIVE OFFENDERS AND LEGAL REGIME IN INDIA

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Abstract: Crime causes existential challenge for society and members of society. In 21st century due to scientific and technological developments particularly in transportation, production, marketing, investment, information technology and cybernetics, world scenario has completely changed. It has ushered era of globalization in which national boundaries has become lesser important. There is not only globalization for trade and other civil function but such developments have also caused globalization of criminals, crimes and impacts of crime commissions. Major challenges are coming from criminals taking refuge in other countries, thereby, unavailable for investigation, criminal proceeding and actions. After commission of economic offences in which larger proceed of crime is involved or rich person after commission of even traditional crime or from foreign land by use of modern facilities or organized crime networks crimes are committed; such fugitive offenders are unavailable to criminal justice system and it increases crime conducive environment needed to tackled through strengthening legal regime and international cooperation. This paper will deal with Indian legal regime improvements and endeavours for tackling fugitive offenders challenge.

Key Words: Absconder, Criminal Justice, Economic Offences, Fugitive Offenders, Legal Regime,

INTRODUCTION

Crime coped situation is marker for sobriety, civility, development, peace, happiness and prosperity in the society. Effective coping of crime challenge depends on efficient criminal justice system. Presently criminal justice system faces major challenge due to fugitive offenders, thereby, inability on part of law enforcement and adjudicatory body to conduct proceedings and take actions against criminal elements. Effective criminal justice dispensation depends on availability of accused for investigation, trial, conviction, reformatory or penal measure determination and infliction. Alleged person, if he has committed crime, has all the information about facts involved in the case and in such reference about available evidences; without his availability and cooperation effective investigation to collect the evidences and to have complete information about facts involved in the case are difficult tasks. Further, non-action against criminal erodes confidence and trust of public in criminal justice system which ultimately completely affects social solidarity and creates criminogenic conducive environment. Non-action against criminal due to his non-availability results into loss of lesson giving effect of criminal justice system. After commission of crime criminals attempt generally in two ways, one, to destroy available evidences, and other, to evade his own availability for proceeding in the case.

Now in the era of science of technology world is connected through speedier mode of transportation; after commission of crime criminals abscond swiftly to distant places. Further, for criminals state boundaries in reference to their crime operations have become meaningless, they operate internationally or cross-boundary; in many instances criminals commit crime in India from abroad. Hereby, there are two situations when criminal available in foreign land is needed to be brought in India for criminal proceedings, one who after commission of crime has absconded and other who from foreign land has committed crime in India. Penal law in India provides for extra-territorial applicability for commission of crime anywhere and person from anywhere under which alleged person may be tried and penalised in India. General penal law contained in Bharatiya Nyaya



Sanhita 2023 (hereinafter referred as BNS)¹ in Section 1 (3) provides that a person is liable for punishment under the provisions of this Sanhita who is found guilty in India for violation of provisions this Sanhita; Section 1 (3) BNS for punishment infliction does not require crime commission within India but only require that person is found guilty in India, thereby, whenever crime affects criminal justice system in India, a person on availability may be dealt through prescribed criminal procedure and in this reference Section 1 (4) BNS specifies more that offences committed beyond India shall be tried in India and criminal shall be liable under the provisions of BNS by treating such offences committed beyond India as those were committed within India and for it only condition prescribed in the provision is that such criminal is liable for trial in India by some law for time being in force. Few specific instances are given and permitted by Section 1 (5) BNS in which confusions are cleared for beyond territorial applicability of penal law of India, one in case of crime commission by Indian citizen, second in case of crime commission on ship or aircraft registered in India and third in case of targeting computer resource located in India. Section 1 (3), 1 (4) and 1 (5) BNS implicitly clear intention of Indian criminal justice system that criminal anywhere affecting Indian interests cannot be left but he has to face criminal proceedings in India. Such criminals absconded to other country after commission of crime in India or from other country committing crime in India or committing crime in other country affecting Indian interests are needed to be available to law enforcement agencies and adjudicatory authorities for effective proceedings and actions.

Criminal after commission of crime attempts to evade his availability by abscondance within country or beyond country by which any proceeding or action has not to be taken against him. Generally traditional crimes are committed by criminals belonging to lower class who lack sufficient resources to abscond to other country, thereby, they usually abscond to distant place but within the country; India is larger country with much population density, language and cultural variation, thereby, identification of such criminal and his arrest becomes very difficult even within the country particularly in case of his taking refuge in remote areas. Economic offences are generally committed by person belonging to upper class and they have much resources of himself and also he has larger proceed of crime which he utilizes to abscond to the other country. Non-proceeding and non-action against criminals create criminogenic conducive environment, criminal law loses deterrent effect and public confidence decreases in criminal justice system. Thereby, efficient legal regime, as it is Indian legal regime, has effective measures to ensure availability of fugitive offenders².

1. Fugitive Economic Offenders Act 2018

Generally, criminals of economic offences are richer persons possessing one's own property and also larger sum of proceed of crimes. Such socio-economic criminals after committing large scale scam, misappropriation of public exchequer, or fraud to avoid criminal actions abscond to some other country. The other country where such offender has absconded usually provides him shelter because he is in possession of larger sum obtained by commission of his misdeeds and it is invested there. Previously to deal with such absconders sufficient and effective law was lacking. Fugitive Economic Offenders Act 2018 (FEO Act) was enacted to check the challenges of non-availability of absconder who has escaped to some foreign country after commission of crimes. Fugitive Economic Offenders Act 2018 provides measures for confiscation of properties of fugitive offenders, thereby,

¹ . Previously general penal law in India was provided in Indian Penal Code 1860 which was repealed in 2023. Presently general penal law in force is Bharatiya Nyaya Sanhita 2023 (BNS).

² .Whenever any country wants cooperation from other country in reference to attainment goals of criminal justice in dealing with criminal elements available at the time being in other country, need is arises to provide same or similar cooperation to such other country. For this purpose to provide cooperation to other countries in dealing with their fugitive offenders India has enacted Extradition Act 1962 and one wholesome Chapter VIII is provided in Bharatiya Nagarik Suraksha Sanhita. Besides these laws Section 35 BNSS empowers police officer to arrest without warrant the accused alleged to commit crime in other country.



property misappropriated is to be realized from him and also he is pressurized to surrender and submit himself to jurisdictions of criminal courts of India.

According to Section 2 (1) (f) FEO Act fugitive economic offender is an individual alleged for commission of offence mentioned in schedule of the Act and against him arrest warrant has been issued by court but he has absconded in other country to avoid criminal proceedings or he is in other country and not returning to India with a view to avoid criminal proceeding pending against him. Schedule of the FEO Act mentions various offences punishable under Bharatiya Nyaya Sanhita and special penal statutes which are primarily relate to defrauding public or public exchequer, property, and corruption offences. Only going to other country does not make an accused as fugitive offender; main determinative factor is person goes in other country or he is in other country and he is not returning to India with a view to avoid the criminal proceeding. Further, two more things are necessary requisites to make a person fugitive economic offender, first, he is accused of any offence mentioned in the schedule of the Act, and second, arrest warrant has been issued against the accused and he is absconder. Initially person may be accused and available in the case before the law enforcement agency and court, yet he is not fugitive offender but later on absconds to other country with a view to avoid criminal proceedings against him, now he will become fugitive offender; it is cleared in Section 3 of FEO Act that whenever person absconds to other country with objective to avoid proceeding, he will become fugitive economic offender and this Act will become applicable against him. FEO Act does not create any substantive offence but it is enacted with a view - 1. to attach and confiscate properties of such absconder to realize the amount misappropriated by him, and 2. to pressurize the offender to come back in India and be available for criminal proceeding. In the Act objective of legislation is clarified that it is an Act to provide measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts and to preserve the sanctity of rule of law in India.

Fugitive Economic Offenders Act 2018 is enacted with double goals, firstly, to pressurize fugitive offender for submitting himself to jurisdiction of Indian courts, and secondly, to identify, attach and confiscate proceed of crime and properties of fugitive offender to realize the whole amount obtained by such fugitive offender by his misdeeds. Director and Deputy Director are authorities empowered under FEO Act for enforcement of provisions of the Act. Definitions in Section 2 (1) (e) and 2 (1) (d) FEO Act for Director and Deputy Director clear that they are same public servants appointed as Director and Deputy Director under Prevention of Money Laundering Act 2002; it is more cleared by Section 4 (3) FEO Act.³ Normal course of proceeding under the Act is to get the absconder declared as fugitive economic offenders thereafter his properties are attached and confiscated. In exigency situation when there are reasons to belief that declaration of accused as fugitive economic offender may take time and in mean time there is risk of becoming property unavailable, in such situation property may be attached in the first instance thereafter application may be moved for declaration of accused as fugitive economic offender.

When Director or Deputy Director authorised by Director has reason to belief about a person that he is fugitive economic offender on the basis of materials available with him, such officer may file application u/s 4 (1) FEO Act before the special court established under the Act for declaration of such person as fugitive economic offender. Jurisdiction to declare an accused as fugitive economic offender is conferred on special court and about special court Section 2 (1) (n) FEO Act directs that it is Session Court designated as special court u/s 43 (1) Prevention of Money-laundering Act 2002. In application under Section 4 (1) FEO Act reasons for belief about person being fugitive economic offender are given; information about whereabouts and list of properties are also provided. With the permission of special court properties mentioned in application under Section 4 (1) FEO Act are attached by director or officer authorised by director.⁴ Attachment of property is made to check

³ . Section 4 (3) FEO Act 2018 provides that ‘the Authorities appointed for the purpose of the Prevention of Money-laundering Act, 2002 (15 of 2003) shall be the Authorities for the purpose of this Act.’

⁴ . Section 5 FEO Act 2018



disposal of such property; action of attachment is taken after submission of application under Section 4 (1) FEO Act with the permission of special court but in exigency situation when it appears that filing of application and obtaining of permission for attachment may involve some delay and in the mean time property may not be available for confiscation, in such situation Section 5 (2) of the Act permits attachment of property in the first instance thereafter within thirty days application in Section 4 (1) FEO Act may be filed. Order of attachment of property may remain in force for maximum 180 days which may be extended by special court for further period.

Section 6 FEO Act confers some powers of civil court like discovery and inspection, enforcing attendance of persons and examining them on oath, compelling production of records, receiving evidence on affidavit, issuing commission for examination of witnesses and documents etc on Director and other authorised officers in reference to matter relating to Section 4 of the Act. Section 7 FEO Act empowers director and other authorised officers to enter in any premise to make survey of records and properties, Section 8 empowers them to enter in any premises to make search and seizure and Section 9 of Act empowers such officers to make search of person. Such survey, search and seizures are made in reference to proceeding to declare person as fugitive economic offender and find out proceed of crime, benami property and other properties. In Section 103 r/w 44 BNSS mandatory duty is imposed on persons related with premises like occupier, possessor or owner to facilitate the search and seizure; in case of non-availability of such facilities, officer may use compulsive measures. In FEO Act Sections 7, 8 and 9 provide special provisions in reference to search and seizure, the occupier is under duty to facilitate survey, search and seizure. When such aforesaid facilities are not provided, officer is empowered under Section 8 (b) FEO Act to break open the lock of any door, box, locker, place etc and besides it general provisions provided in BNSS may also be applicable. When a person is to be searched, he may get himself searched in presence of Gazetted officer; person to be searched may convey his desire to be searched in presence of Gazetted Officer then searching authority has to take such person before the nearest Gazetted Officer within 24 hours excluding the time necessary for the journey, after production before the Gazetted officer, such officer will take decision about search.

Special Court, in proceeding relating to application in Section 4 (1) FEO Act to declare the person as fugitive economic offender, issues notice to such alleged person and notice is also issued to person having interest in the property mentioned in the application.⁵ Notice for appearance is not less than six weeks time to appear which is counted from date of issuance of notice. Notice has to specifically mention that non-appearance may cause declaration of person as fugitive economic offender and such non-appearance shall also result in confiscation of properties. Notice is served to accused through authority notified by Central Government for serving the notice in the contracting country; Section 10 (5) of the Act requires that efforts shall be made to serve the notice within two weeks. Notice may also be served by use of electronic communication means. Absconder, by proceeding under FEO Act, is going to be declared as fugitive economic offender as he is avoiding proceeding against him by escaping to another country; in case such alleged person returns to India, he will cease to be fugitive. Further, in FEO Act proceedings are conducted mainly to pressurize the fugitive to return and participate in the proceedings. Therefore, Section 11 (1) FEO Act explicitly provides that when such person to whom notice is served u/s 10 (1) appears in person at the place and time specified in the notice, the special court may terminate the proceeding relating to declaring him fugitive economic offender.

A person is fugitive offender when he is absconding from legal proceeding and taking refuge in other country; such absconding is evident from the fact of allegation of commission of offences mentioned in the schedule of the Act and issuance of warrant of arrest by court in India. Physical appearance clearly shows that now person does not want to remain absconder but he will cooperate in the proceeding pending against him. Physical appearance of absconder in itself is

⁵ . Section 10 (1) and (2) FEO Act 2018.



sufficient to dismiss application filed for declaration of him as fugitive offender. When in response to notice issued under Section 10 (1) of the Act, person does not appear personally but appears through counsel then special court may give one week time to file reply to the application filed under Section 4 (1) FEO Act⁶, reason is person has not completely submitted himself for proceeding before the court, he is still unavailable to the court therefore difference is made between action under Section 11 (1) and 11 (2) FEO Act. After hearing on application filed under Section 4, if special court is satisfied, it may declare the person as fugitive economic offender.⁷ Further, special court may order for confiscation properties situated in India and abroad. For confiscation of properties situated in other country court issues the letter of request to court or authority in the contracting country. When in any property any other person has acquired interest and such interest is acquired bonafide and without knowledge, court may exempt such property from confiscation.⁸ Section 16 FEO Act provides for burden of proof and standard of proof; burden of proof for establishing that person is fugitive economic offender and property belongs to him, is imposed on director or authorised officer and standard of proof is determined as of preponderance of probabilities. Any party aggrieved by decision of Special court may prefer appeal against its judgment before the High Court within thirty days counted from the date of the judgment. High Court may entertain appeal even after thirty days time period prescribed for filing of appeal but such extended period cannot be further extended to more than ninety days.⁹ In reference to confiscation of properties many legislations are applicable, therefore need arises to clarify the situation in case of inconsistency, and further, various Acts are dealing with the same subject matter which may affect the efficacy of law, thereby, criminal justice system in dealing with serious crime challenge posed before society particularly affecting economic health of society, therefore, Section 21 FEO Act explicitly provides overriding effect to FEO Act over to other legislations in case of arising of any inconsistency. Further, Section 22 FEO Act declares that provisions of this Act are in addition to and not in derogation of any other law for time being in force.

*Sanjay Bhandari v. Directorate of Enforcement*¹⁰ was decided by Delhi High Court on 31st July 2025 in which accused, an arm dealer, was residing in United Kingdom against many proceedings and investigations were pending in India. Enforcement Directorate invoked jurisdiction of Court for declaring him fugitive offender under FEO Act 2018. Delhi Court observed in the case that for declaration an accused as fugitive offender necessary requisite is subsisting Non-bailable Warrant which was lacking in this case. Further Court observed that the FEO Act is not punitive but only mend for getting submission of accused to criminal proceeding against him as in Section 10 (1) FEO Act proceeding under the act terminates as soon as accused appears in reference to notice issued to him.

2. PROCLAMATION ISSUANCE AND ATTACHMENT OF PROPERTY FOR ENSURING AVAILABILITY OF ACCUSED

No doubt law presumes every person including accused as law abiding but generally after committing crime criminals make all his efforts for non-availability of any clue in the case but even after that some clues remain available, in such situation criminals attempt to evade the arrest. Availability of accused is much needed for investigation and other proceedings. In Part 'C' of Chapter VI of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred as BNSS) more compulsive measures are provided for ensuring availability of accused; provisions in this regard are applicable at every stage in criminal case but particularly it is used at investigation stage. For use of compulsive measures contained in Part 'C' of Chapter VI of BNSS precondition is issuance of warrant

⁶ . Section 11 (2) FEO Act 2018

⁷ . Section 12 (1) FEO Act 2018

⁸ . Section 12 (7) FEO Act 2018

⁹ . Section 17 FEO Act 2018

¹⁰ . indiankanoon.org/doc/148660533/ accessed on 14.5.2026.



of arrest which is remaining unexecuted due to evading of arrest by accused by his abscondance or concealing. For issuance of proclamation under Section 84 BNSS issuance of warrant of arrest and its non-execution are essential requirements; under Section 85 BNSS for attachment of property of person absconding issuance of proclamation under Section 84 BNSS is essential requirement and in some exceptional situation issuance of proclamation and attachment of property may be simultaneous, thereby, for attachment of property of absconding person issuance of arrest warrant, its non-execution and issuance of proclamation are essential pre-requisites.

When arrest warrant issuing court on having reason to believe that warrant is not executed due to absconding or concealing of accused, it is empowered in Section 84 BNSS to issue written proclamation of not less than 30 days counted from date of its publishing. Proclamation is public notice which is publicized to communicate absconding person for surrendering at specified date and place. Section 84 (2) BNSS directs for publishing of proclamation by reading the proclamation publicly in some conspicuous place of the town or village in which such person ordinarily resides, affixing to some conspicuous part of house or homestead or conspicuous place of town or village, and a copy of proclamation be affixed at some conspicuous part of court; these are compulsory measure to be used for publishing of proclamation. Further, one discretionary measure is also provided which may be taken by court when it thinks fit, it may direct for publishing proclamation in a daily news paper circulating in the place in which such person ordinarily resides. Ultimately after observance of publicizing procedure court has to give statement in writing regarding publishing of proclamation and it is conclusive proof of proclamation issuance and publication; from such date proclamation period is counted. When proclamation is made against accused whose offence is punishable with imprisonment of ten years or more, life imprisonment, or death sentence, whether such offences are punishable under Bharatiya Nyaya Sanhita or any other law for time being in force, on expiry of proclamation period court is empowered after making inquiry, as it thinks fit, may declare accused as proclaimed offender.¹¹ Hereby, it is clear that every accused against whom proclamation has been issued, is not proclaimed offender but it is only those who are accused of more serious offences determined on the basis of prescribed punishment as mentioned in Section 84 (4) BNSS, and further, for proclaimed offender Court's pronouncement in such regard is necessary requisite. In response to proclamation non-appearance within prescribed period is offence under Section 209 BNS punishable with term of imprisonment extending up to three years or fine or both or community service but when accused has been declared as proclaimed offender, prescribed punishment is severe as punishable with term of imprisonment extending up to seven years and also with fine.

After issuance of proclamation at any time court may order attachment of property of absconding person; it is one more compulsive measure for pressurizing to surrender to jurisdiction of court or other authorities. For passing attachment order expiration of period of proclamation is not necessary but issuance of proclamation is necessary.¹² Generally, after expiration of period of proclamation court passes order for attachment of property but it is not necessary under provisions; precondition for attachment of property of absconder is issuance of proclamation but expiration of proclamation period is not needed. In exceptional situation when court is satisfied that absconder is about to dispose the whole or part of property or about to remove such property from local jurisdiction of court attachment order may be passed simultaneously with issuance of proclamation. In reference to attachment court may give order for movable or immovable property or both. Section 88 BNSS clear that attachment order is passed only for pressurizing absconder to submit to jurisdiction; Section 88 (1) BNSS provides that if proclaimed person appears within specified time, Court shall order for release of property from attachment. In case proclaimed person does not appear within stipulated period then property comes on disposal of State Government but for sale Section 88 (1) BNSS prescribes a wait period of six months to be counted from date of attachment

¹¹ . Section 84 (4) BNSS

¹² . Section 85 BNSS



of property and only after expiry of such period and disposing of claim or objection regarding such property, Government may dispose the property; two situations are there when without observing aforesaid court may direct for sale of such attached property, one, property is subject to speedy and natural decay, and second, when court consider sale would be for benefit of the owner. When within two years of attachment of property proclaimed person appears and proves that he was not absconder and he did not have notice of proclamation, his property is returned or in case of sale net proceed of sale has to be given to him.

On declaration of accused as proclaimed offender under Section 84 (4) read with 84 (1) BNSS police officer is empowered to arrest without warrant under Section 35 (1) (d) BNSS, private person may arrest without warrant under Section 40 BNSS, Chief Judicial Magistrate or Judicial Magistrate First Class may issue warrant of arrest to any person under Section 75 BNSS. In some cases police officer may not have applied for issuance of warrant of arrest in the first instance but making attempts to arrest without warrant and on failure willing to use more compulsive measures of issuance of proclamation and/or attachment of property; in such situation it will be needed that now police officer has to apply the court for issuance of warrant of arrest and on its non-execution he has to apply court for directions for proclamation issuance and/or attachment of property; when proclamation is issued and case comes under Section 84 (4) BNSS with satisfaction of conditions prescribed therein accused is declared as proclaimed offender. Whenever any special procedure is not provided by special penal statute then procedure prescribed in Bharatiya Nagarik Suraksha Sanhita is applicable for special penal statutes due to Section 4 (2) BNSS¹³, and further, only after issuance of proclamation investigating agency in case of fugitive offender may request the international agencies to cooperate in arrest and availability of fugitive offender. Hereby, provisions relating to proclamation issuance, declaration of accused as proclaimed offender and attachment of property are crucial for ensuring availability of fugitive offenders.

3. ARREST OF CRIMINAL AND CONFISCATION OF PROCEED OF CRIME IN COUNTRY WITH TREATY OBLIGATION

In present era of globalization crime, criminal and criminal gangs have also globalised, and further, such problem is more augmented due to communication means revolution which includes electronic communication means revolution and transportation means revolution. In such situation without international cooperation crime challenge cannot be effectively dealt with. International criminals operate gang and commit crime from other country or after commission of crime criminal abscond to other country or in crime commission cooperation is sought from criminals from other country; in all such situation there is need to have criminals from other country available for criminal proceedings against them for tackling of crime challenge. In Bharatiya Nagarik Suraksha Sanhita, the Sanhita consisting general criminal procedure, sufficient provisions are provided for international cooperation. Section 110 (1) (ii) and 114 (1) and (2) BNSS provides beyond India effect to summon and warrant of arrest issued by courts in India. In Section 110 (1) (ii) BNSS general provision is given which is applicable for contracting country and also other countries with which Government of India has made some arrangement in reference to service and execution of warrant of arrest whereas Section 114 BNSS is special provision applicable only in reference to warrant of arrest issued by Indian court to be executed in contracting country or issued by court in contracting country to be executed in India. Section 110 (1) (ii) BNSS directs for sending of summon or warrant by issuing court to court situated in other country with which Government of India has made arrangements for service or execution of summon or warrant in relation to criminal matter. In Section 110 (1) (ii) BNSS to which court in other country process shall be send for execution is notified by Government of India by notification. In Section 114 (1) and (2) BNSS warrant is issued and send to court in contracting country and Section 114 (3) BNSS provides that warrant issued by

¹³ . Section 4 (2) BNSS provides: “All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences”.



court in contracting country shall be executed in India in same manner as it is issued by court and executed beyond territorial area of issuing court. Further, in reference to get help in investigation in contracting country in Section 112, 113 and 123 of Chapter VIII of BNSS provisions are provided for issuance of letter rogatory by competent court requesting the concerned authority. Major problem faced by nations presently by commission of economic offences of which proceed of crime is invested in other country; in such case for effective action against criminal elements and to check the impacts of such crime commission much needed action is identify and confiscate the proceed of crime and in such regard special criminal law Acts like Prevention of Money Laundering Act prescribes procedure but certain aspects are not covered by such enactments, thereby, general criminal procedure is provided in BNSS in Section 115, 116, 117, 118, 119, 120, 121 and 122 in Chapter VIII for identification, attachment and confiscation of proceed of crime in contracting countries. Chapter VIII of Bharatiya Nagarik Suraksha Sanhita provides crucial provisions for effective actions against fugitive offenders and for it facilitating requisite of international cooperation is attempted by the legislature.

4. TRIAL IN ABSENTIA

Inaction against criminal elements augments serious crime challenge; it creates criminogenic conducive environment in which criminals becomes fearless and common citizenry becomes fearful. On commission of crime always there should criminal justice dispensation actions for identification, detection, apprehension, prosecution, conviction and infliction of effective measure of appropriate extent. But for all aforesaid availability of accused is necessary. Whenever any person is alleged and actually he has committed crime, he attempts to avoid proceeding by concealing his presence or abscondance. During investigation and trial physical availability and presence is much needed; without it such proceeding may be difficult. Evidences are primarily and completely known to criminal because of which without his cooperation those cannot be identified and collected, thereby, for investigation his availability and cooperation of is necessary. Further, in Indian criminal justice system person alleged for commission of crime is presumed as innocent till his guilt is proved beyond reasonable doubts on the basis of evaluation of evidences. Indian criminal justice system is based on concept of fair trial, therefore, alleged person is needed to have effective opportunity of hearing and effective opportunity to defend himself which can only be possible when all evidences in the cases are taken in presence of accused and he understand proceeding and evidences against him. But only in name of fair trial proceeding is stayed against absconder, it may create a mockery for criminal justice and crime challenge may remain unchecked. Perusal of requirement of fair trial clears that providing opportunity for fair trial is necessary and it is for accused to utilize such opportunity; in case he is not utilising even then fair trial requirement is satisfied, for his failure criminal justice system cannot be suffered in dealing with crime, criminal and criminality. Even after repeated attempt through issuance of summon and warrant of arrest, if he is not available, proceeding may be conducted in absentia, on disposal of case effective actions may be determined against him which may be inflicted whenever he becomes available.

It is requirement of fair trial that evidences in the case should be taken in the presence of accused; in this regard provisions are also given in Section 308, 313 and 314 BNSS which compulsorily require from the court to take evidences in presence of accused, and explain the evidences to accused. Explanation to Section 355 BNSS permits accused to be present in the court through electronic communication means but for it certainly permission of court will be needed; reading the general directives contained in Section 530 BNSS and Explanation to Section 355 BNSS together prescribes for use of electronic communication means but provisions relating to presence in court implicitly refer physical presence in the court is even after enactment of Bharatiya Nagarik Suraksha Sanhita remains preferred means and appearance through electronic communication means is only enabling provision to be used exceptionally subject to permission of court. Now personal attendance of accused in court may be through physical presence or electronic communication means. One more means of appearance of accused in court permissible in Bharatiya Nagarik Suraksha Sanhita is



through advocate; such permission is given in case of dispensing with personal attendance of accused and permitting his appearance through advocate. With introduction of personal attendance of accused through electronic communication means, certainly measure of dispensing with personal attendance will lose its importance and also need for its use; previously presence of accused was only through physical presence but now it may be even through electronic communication, therefore, wherever need will arise to permit dispensing with physical presence and permitted to be present through electronic communication which is also treated as physical presence by Explanation to Section 355 BNSS¹⁴, thereby, need may not arise for dispensing with personal attendance. In Section 228 and 355 BNSS court may dispense with attendance of accused, then evidences are taken and explained to advocate of accused. Section 308 BNSS requires that evidences shall be taken in presence of accused and when his attendance is dispensed with u/s 228 or 355 BNSS then in presence of his advocate or he may present through audio-video electronic means. Section 308 BNSS provides:

“Except as otherwise expressly provided, all evidences taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his advocate including through audio-video electronic means at the designated place to be notified by the State Government.”

Proviso to Section 308 BNSS directs to court to take appropriate measures for record of statement of victim of rape or any other sex offence when age of victim is below eighteen years that such woman is not to be confronted by the accused but at the same time court has responsibility to ensure satisfaction of right of cross-examination of accused. Under Section 228 or 355 BNSS accused is dispensed with attendance then witness is no doubt not examined in presence of accused but certainly witness is examined in presence of advocate of accused. But when accused is permitted to appear through electronic means then it is similar to his physical presence all the proceeding takes place before him and matters are also explained to him by the court by using the electronic means. In Section 356 BNSS one situation is given when in complete absence of accused proceeding may be conducted.

In *Hussain v Union of India*¹⁵ Supreme Court after considering Criminal law in Bangladesh observed that In India also there should be law permitting for trial in absentia. Criminals by abscondance create complete impediment in criminal justice administration, such absence avoiding criminal proceeding should be taken as creating deeming for waiver of right to tried in his presence. 177th and 239th Report of Law Commission considered and observed that abscondance of accused are major problem for speedy disposal of cases. Article 14 (3) (d) of International Covenant of Civil and Political Rights (ICCPR) it is clearly recognizes trial in presence of accused and his right to be defended by advocate of his own choice; India is signatory of this covenant and it is respected and also provided in Indian legal regime. but problem of absconders creating serious challenge before Indian society is needed to be addressed, therefore, balance has been made by adding of Section 356 BNSS by which deeming situation is created that when accused is absent from the proceeding and even after repeated issuance of process, he is not submitting for proceeding then it will be deemed as he has waived his right to be tried in his presence. Section 356 BNSS provides for trial in absentia of proclaimed accused. Section 356 BNSS is provided with over-riding effect over all the

¹⁴ . Explanation to Section 355 BNSS provides: “For the purpose of this section, personal attendance of the accused includes attendance through audio-video electronic means”. Section 355 BNSS consists same provision which was provided in repealed law CrPC 1973 in Section 317 with one difference that is new addition of this explanation through which physical presence consideration is widened to include presence through audio-video linkage.

¹⁵. (2017) 5 SCC 702.



provisions relating to trial whether under Bharatiya Nagarik Suraksha Sanhita or any special penal statute.¹⁶ Section 356 (1) BNSS provides:

“Notwithstanding anything contained in this Sanhita or any other law for time being in force, when a person declared as a proclaimed offender, whether or not charged jointly has absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person, and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present, under this Sanhita and pronounce the judgment”

In Section 356 BNSS provisions provides in sub-section (1) for declaring person as proclaimed offender for purpose of in absentia trial that two consecutive warrants are issued with at least thirty days interval, proclamation is published in news papers requiring attendance of accused before court for trial and in such proclamation at least thirty days time limit be provided for appearing before the court. Such proclamation must be intimated to relative or friend of accused, and further, it has to be affixed at conspicuous part of home or homestead. If even after expiry of proclamation period accused does not appear, now sub-section (1) of Section 356 BNSS applies accordingly absconder shall be tried in absentia. Section 356 (1) BNSS creates double legal fiction, one, it shall be deemed for waiver of the right of such accused to be present and tried in person, and second, trial will proceed in absentia with like effect as if such accused is present in the proceeding. Section 356 (3) BNSS directs for providing advocate at the expense of the State to such proclaimed offender if he is not represented by any advocate. By Proviso to Section 356 (1) BNSS at least 90 days time limit expiration requirement is given for initiation of trial of absconder and this time period is counted from date of framing of charge. Only on expiration of 90 days from framing of charge trial of accused who has been declared as proclaimed offender under Section 356 (2) BNSS may commence. One another instance for in absentia evidence taking is provided under Section 335 BNSS. But it has to be cleared that Section 356 BNSS provides for trial of absconder but Section 335 BNSS provides only for evidence recording in absentia.

CONCLUSION

States whole through the world are facing serious challenge created by fugitive offenders which compels for withering away of 19th and 20th centuries concept of criminal justice system operations cribbed to be operated within state boundaries. Criminals have become international operating across the national boundaries compelling for criminal law enforcement should also become international through inter-nations cooperation. Terrorism, illicit drugs smuggling, money laundering and cyber crimes are usually operated from other country or routed through other country. Further, after commission of crimes specially corruption and economic offences usually criminals abscond to other country. Without proper measures in criminal law to deal with such fugitive offenders available in other country, compelling to surrender before criminal justice machinery, closing source of funding and confiscation of proceed of crime in present era crime challenge cannot be effectively tackled and in it international cooperation plays major role. Article 13 of United Nations Convention against Transnational Organized Crime 2000 directs state parties for inter-nation cooperation for identification and confiscation of proceed of crime. In Chapter IV of United Nations Convention against Corruption 2003 after realizing need directions were given to state parties for international cooperation, information sharing and technical help. In India fugitive

¹⁶ . Section 5 BNSS clearly provides that when provisions contained in BNSS explicitly provided then procedure in this Sanhita may prevail over pre-existing procedure contained under special penal statute– ‘...in absence of specific provision to contrary affect any special or local law...’ means when specific provision under BNSS is provided to prevail over pre-existing special law then procedure of BNSS shall be applicable but it is exceptional situation; in normal situation due to Section 4 (2) read with Section 5 BNSS special penal statute is primarily applicable and not affected by provisions of BNSS. In Section 356 such prevailing procedure over special law is given by providing – ‘(1) Notwithstanding anything contained in this Sanhita or in any other law for time being in force...’



offenders, absconders taking refuge beyond India, are graver challenge for Indian criminal justice dispensation and to deal with such challenge Indian legal regime has recently made striving to provide sufficient and effective measures. Proper enforcement of legal provisions with inter-nation cooperation may effectively deal with fugitive offenders challenge, thereby, criminal justice system may realize its ultimate goal to protect society and members of society against crime, criminal and criminality. Fugitive offender is challenge before the world at large and need is to utilize international initiatives for creation of conducive environment world-wide for inter-nation cooperation.

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