

Fugitive Economic Offenders Ordinance

What is the issue?

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- Fugitive Economic Offenders are those who leave the country in the face of scandal and refuse to return to face trial.
- President has issued an ordinance on to make life difficult for “fugitive economic offenders”, which is likely to be welcomed by the masses.
- But the ordinance is constitutionally inconsistent and its unintended consequences could potentially wreck havoc on innocents.

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How does the ordinance affect non-offenders?

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- Fugitive offender’s ordinance provides a provision for “disentitlement”, which could victimise an innocent on suspicion of being a fugitive offender.
- Under this provision, any court in India could issue a directive to disentitle any company related to the “fugitive offender” from defending any civil claims.
- For instance, let’s say the MD or a promoter of a company is alleged to have committed a “scheduled offence” as listed in law.
- If the offender flees and refuses to come back to India, civil courts could bar the company from pursuing even legitimate dues owed to it.
- This provision goes beyond the person rejecting the rule of law in India and may affect people who are themselves affected by the fugitive.
- This line of thinking also loses sight of the fact that those who still remain in India continue to subscribe to Indian law and are legitimate entities.

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- **Implications** - This could become an incentive for law enforcers to grab headlines by taking stringent actions that might hurt companies.
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- As civil claims get barred, 3rd parties that owe money to companies whose “promoter (or manager) is a declared fugitives” might intentionally default.
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- Also, despite being a solvent company, the company the fugitive leaves behind would face a potential prohibition on the sovereign assurance.
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What are the other non-prudent provisions?

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- To have any individual declared as a fugitive economic offender, an application has to be moved by the authorities asking the competent court for the same.
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- However, even while moving the application, the authority has the power to attach any property listed in the application, for 180 days.
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- The only ground needed for such attachment is the reasonable doubt that the property is a “proceed from crime”.
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- Another clause states that a person (other than the fugitive), whose property is attached, would have to shoulder the burden of proof to reclaim it.
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- Additionally, if criminally acquired property is outside the country, any other property equivalent in value held within the country would be attached.
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Source: Business Standard

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