

## Explaining the Fugitive Economic Offenders Ordinance

Nirav Modi poses during the launch of his store in Mumbai on March 14, 2015. | Photo Credit: [Reuters](#)

Under the Fugitive Economic Offenders Ordinance, promulgated by the President in April, a fugitive economic offender is any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India and who has either left India to avoid criminal prosecution, or who, being abroad, refuses to return to India to face criminal prosecution.

The list of offences that can qualify an individual to be designated an economic offender, enumerated in the schedule to the Ordinance, includes offences under several Acts such as the Negotiable Instruments Act, 1881; the Reserve Bank of India Act, 1934; the Central Excise Act, 1944; the Customs Act, 1962; the Prohibition of Benami Property Transactions Act, 1988; the Prevention of Money Laundering Act, 2002; and the Indian Penal Code.

A special Prevention of Money Laundering Act court on June 30 took cognisance of an application by the Enforcement Directorate (ED) under the Ordinance and issued summons to Vijay Mallya and others before it on August 27, 2018. The ED on July 11 also moved a special court in Mumbai seeking 'fugitive economic offender' status for Nirav Modi and his uncle Mehul Choksi.

If the special court is satisfied that an individual is a fugitive economic offender, it can direct the Central government to confiscate the proceeds of the crime in India or abroad, whether or not such property is owned by the fugitive economic offender, and any other property or benami property in India or abroad that is owned by the fugitive economic offender. While the confiscation of property within India should not be a problem for the Centre, confiscating properties abroad will require the cooperation of the respective country. The fugitive economic offender will also be disqualified from accessing the Indian judicial system for any civil cases.

In keeping with the principle of 'innocent until proven guilty', the burden of proof for establishing that an individual is a fugitive economic offender or that certain property is part of the proceeds of a crime is on the Director appointed to file an application seeking fugitive economic offender status.

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