

ED's expansion: Extension of Anti-Money Laundering Powers

Bussiness Standard

Paper - III
(Internal Security)

❖ **The agency is entering new areas of surveillance.**

Last week, the Enforcement Directorate (ED), the 66-year-old agency that puts into operation the Foreign Exchange Management Act (Fema) and Prevention of Money Laundering Act (PMLA), saw an exponential expansion of its powers under the PMLA.

Expanding Information Sharing

The Centre has amended a 2006 notification to include 15 organisations on the list of institutions with which the ED may share information regarding cases. Among these are the National Investigation Agency (NIA), the Competition Commission of India (CCI), the Serious Fraud Investigation Office (SFIO), and State Police Divisions. This expands substantially the ambit of the ED's information-sharing brief, which was previously limited to such bodies as the Central Bureau of Investigation's economic offences wing, the banking and stock market regulators, the Research and Analysis Wing of the Cabinet Secretariat, and the Intelligence Bureau, apart from the chief secretaries in states.

Why the question mark on the new list included in ED?

With the latest list, several questions arise. First, some of the institutions that have given ED an uncontrolled and unnecessary increase in powers and jurisdiction the Bureau of Wildlife Crime Control, for example.

Second, if organisations such as the SFIO, Central Vigilance Commission, and NIA are required to share data, it leaves open the question of the enforcement functions of these agencies.

Enforcement Directorate

- ↳ The Directorate of Enforcement is a multi-disciplinary organization functioning under the Department of Revenue, Ministry of Finance. It is tasked with enforcing the provisions of two special fiscal laws - the Foreign Exchange Management Act, 1999 (FEMA) and the Prevention of Money Laundering Act, 2002 (PMLA).
- ↳ The Director of Enforcement heads the Directorate of Enforcement with its headquarters at New Delhi. The Enforcement Directorate has five regional offices at Mumbai, Chennai, Chandigarh, Kolkata and Delhi headed by Special Directors.

Third and most problematic is the inclusion of the CCI within the ED's information-sharing ambit. This has significant consequences for the corporate sector since it lays open to agency scrutiny confidential data that companies submit to the competition regulator. This is hardly likely to add to corporations' confidence in a key institution that governs mergers and acquisitions and, at the very least, will seriously discourage consolidation and buy-outs by foreign corporations.

Supreme Court Judgment and Enforcement Directorate

It is significant that this expansion of the ED's ambit comes just four months after a Supreme Court ruling that upheld the agency's powers of arrest, property attachment, and search and seizure with relative impunity. The court went a step further and said the ED was not bound to produce the Enforcement Case Information Report, the official document recorded before starting a criminal investigation, to the person concerned.

It was enough, the court observed, if the ED disclosed the grounds for arrest when it is done, which is surely an inversion of the basic principles of criminal justice. It is no surprise that, just a month later, the court agreed to list the verdict for review. Of late, the ED has reportedly forged ahead demanding a three-fold rise in staffing plus offices in every state capital.

Why is this necessary?

The grounds for doing so were the notable expansion in its money-laundering case load. Between 2019-20 and 2021-22 — just two years that covered the pandemic — the agency handled 2,723 cases, up from 1,262 in the seven years from 2012-13 to 2018-19.

Organizational History

- ↳ The genesis of the Directorate of Enforcement dates back to the formation of an 'Enforcement Unit' in the Department of Economic Affairs on May 1, 1956, under the Foreign Exchange Regulation Act, 1947 (FERA '47) to deal with violations of Exchange Control Laws.
- ↳ Initially 2 branches were opened in Bombay and Calcutta. In the year 1957, this unit was renamed as 'Enforcement Directorate' and also another branch was opened in Madras.
- ↳ The administrative control of the Directorate was transferred from the Department of Economic Affairs to the Department of Revenue in the year 1960.
- ↳ Further the FERA'1947 Act was replaced by the FERA'1973 Act and for 4 years (1973-1977) this Directorate remained under the administrative jurisdiction of the Department of Personnel and Administrative Reforms. Following the process of economic liberalisation, FERA'1973 (which was a regulatory law) was repealed and replaced by a new law - Foreign Exchange Management Act, 1999 (FEMA) with effect from June 1, 2000.
- ↳ Further, the PREVENTION OF MONEY LAUNDERING ACT 2002 (PMLA) was enacted (with effect from 2005.07.01) in sync with the International Anti Money Laundering Arrangement and handed over to the Directorate of Tax Enforcement.

Why is it being criticized?

Critics have taken this as evidence of the weaponisation of the ED in the light of the notable increase in cases against Opposition leaders and critics of the state (the CBI has been similarly requisitioned). The latest expansion of information sharing suggests that the government is also expanding its surveillance powers to larger swathes of society. An expanding surveillance state is usually a sign of shrinking democracy. This history should not be repeated in India.

Functions and Powers of Enforcement Directorate

- ↳ Checking of contravention of the provisions of the Foreign Exchange Management Act, 1999 (FEMA).
- ↳ The provisions of the Prevention of Money Laundering Act, 2002 (PMLA) include investigation of offenses of money laundering, attachment and confiscation of property and prosecution of persons involved in the offense of money laundering.
- ↳ Adjudicating of show cause notices issued for violation of the repealed Foreign Exchange Regulation Act, 1973 (FERA), which may result in imposition of penalty.
- ↳ To deal with cases of persons who have fled India under the Fugitive Economic Offenders Act, 2018. The objective of this act is to punish fugitive economic offenders who find ways to evade the process of law by staying outside the jurisdiction of Indian courts.
- ↳ Sponsor cases for preventive detention under the Prevention of Foreign Exchange and Protection of Activities Act, 1974 (COFEPOSA) in respect of violations of FEMA.
- ↳ PMLA Providing assistance to other countries in matters relating to money laundering and asset recovery under the provisions of this Act and seeking assistance in such matters.
- ↳ PMLA Any appeal against any order passed by the Court may be filed directly in the High Court for that jurisdiction.

Expected Question

Que. With reference to the Enforcement Directorate, consider the following statements-

1. It investigates violations of the provisions of the Foreign Exchange Management Act, of 1999 (FEMA).
2. It takes action under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA).
3. It deals with cases of people who have been fled from India, under the Fugitive Economic Offenders Act, of 2018.

Which of the above statements is/are true Committed To Excellence

- (a) 1 and 2 only (b) 1 and 2 only
(c) 1 and 3 only (d) all of the above

Answer : D

Mains Expected Question & Format

Que.: Recently, the Enforcement Directorate is in discussion regarding the expansion of its work area. Underlining those points of discussion, throw light on its powers and functions?

Answer Format :

❖ **Introduction (30-40 words)**

write about Enforcement Directorate.

❖ **Main Body (150-160 words)**

Discuss the scope of the Enforcement Directorate and explain its powers.

❖ **Conclusion (40-50 words)**

Give a balanced conclusion.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.