



## Directorate of Enforcement (ED)

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**For Prelims:** Directorate of Enforcement (ED), Money Laundering, PMLA, FEMA, Fugitive Economic Offenders, Investigation Agencies in India, Delhi Special Police Establishment (DSPE) Act, 1946

**For Mains:** Directorate of Enforcement - Responsibilities and Powers, Criticism of ED, PMLA and Absolute Powers of ED

### What is the Directorate of Enforcement (ED)?

- The **Directorate of Enforcement (ED)** is a multi-disciplinary organization mandated with investigation of offences of [money laundering](#) and violations of **foreign exchange laws**.
  - It functions under the **Department of Revenue of the Ministry of Finance**.
- As a **premier financial investigation agency of the Government of India**, the Enforcement Directorate functions in strict compliance with the Constitution and Laws of India.

### Where does the Genesis of ED Lie?

- The origin of this Directorate goes back to 1<sup>st</sup> May, 1956, when an **'Enforcement Unit'** was **formed in the Department of Economic Affairs** for handling Exchange Control Laws violations under **Foreign Exchange Regulation Act (FERA), 1947**.
  - It was headquartered in Delhi, headed by a **Legal Service Officer as the Director of Enforcement**.
  - It had two branches – at Bombay and Calcutta.
- In the year 1957, this Unit was **renamed as 'Enforcement Directorate'**, and another branch was opened at Madras (now Chennai).
- In 1960, the **administrative control of the Directorate was transferred** from the Department of Economic Affairs **to the Department of Revenue**.
- With the passage of time, FERA 1947 was repealed and replaced by FERA, 1973.
  - With the onset of the process of economic liberalisation, FERA, 1973, which was a regulatory law, was repealed and in its place, a new law viz. the [Foreign Exchange Management Act, 1999 \(FEMA\)](#) came into operation w.e.f. 1<sup>st</sup> June 2000.
- Further, in tune with the **International Anti Money Laundering regime**, the [Prevention of Money Laundering Act, 2002 \(PMLA\)](#) was enacted and ED was entrusted with its enforcement w.e.f. 1<sup>st</sup> July 2005.

### What is the Structure of ED?

- **Hierarchy:** The Directorate of Enforcement, with its headquarters at New Delhi, is **headed by the Director of Enforcement**.
  - There are **five regional offices at Mumbai, Chennai, Chandigarh, Kolkata and Delhi** headed by Special Directors of Enforcement.
  - The Directorate has **10 Zonal offices** each of which is **headed by a Deputy Director**

and **11 sub Zonal Offices** each of which is headed by an **Assistant Director**.

- **Recruitment: Recruitment of the officers is done directly** and by drawing officers from other investigation agencies.
  - It comprises officers of **IRS** (Indian Revenue Services), **IPS** (Indian Police Services) and **IAS** (Indian Administrative Services) such as **Income Tax officer, Excise officer, Customs officer, and police**.
- **Tenure:** In November 2021, the President of India promulgated two ordinances allowing the [Centre to extend the tenures of the directors](#) of the [Central Bureau of Investigation \(CBI\)](#) and the Enforcement Directorate **from two years to up to five years**.
  - **2021 Amendment:**
    - It requires **High-Level Committees** to recommend the officers for service extensions.
    - A **five-member panel** composed of the [Central Vigilance Commissioner](#) and **Vigilance Commissioners** had to recommend if an ED Director was worthy of an extension in service.
    - In case of the [CBI Director](#), a **High-Level Committee** of the **Prime Minister, Opposition Leader** and the [Chief Justice of India](#) had to recommend.
    - The [Delhi Special Police Establishment \(DSPE\) Act, 1946](#) (for ED) and the [Central Vigilance Commission \(CVC\) Act, 2003](#) (for CV Commissioners) have been amended to give the government the power to keep the two chiefs in their posts for **one year after they have completed their two-year terms**.
    - The chiefs of the Central agencies **currently have a fixed two-year tenure, but can now be given three annual extensions**.
    - However, no further extension can be granted after the completion of a period of five years in total including the period mentioned in the initial appointment.
  - In July 2023, The **SC upheld statutory amendments** which facilitate the tenures of Directors of the [Central Bureau of Investigation](#) and the [ED](#) to be stretched “piecemeal” but held illegal extension given to the outgoing ED Chief.

## What are the Statutory Functions of ED?

The statutory functions of the Directorate include **enforcement of following Acts:**

- **COFEPOSA:** Under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), this Directorate is **empowered to sponsor cases of preventive detention** with regard to contraventions of FEMA.
- **Foreign Exchange Management Act, 1999 (FEMA):** It is a civil law enacted to consolidate and amend the laws relating to facilitate external trade and payments and to promote the orderly development and maintenance of foreign exchange market in India.
  - **ED has been given the responsibility to conduct investigation** into suspected contraventions of foreign exchange laws and regulations, to **adjudicate and impose penalties** on those adjudged to have contravened the law.
- **Prevention of Money Laundering Act, 2002 (PMLA):** Following the recommendations of the [Financial Action Task Force \(FATF\)](#) India enacted PMLA.
  - The ED has been entrusted with the responsibility of **executing the provisions of PMLA by conducting investigation** to trace the assets derived from proceeds of crime, to provisionally attach the property and to **ensure prosecution of the offenders** and **confiscation of the property** by the Special court.
- **Fugitive Economic Offenders Act, 2018 (FEOA):** Lately, with the increase in the number of cases relating to **economic offenders taking shelter in foreign countries**, the Government of India introduced the [Fugitive Economic Offenders Act, 2018 \(FEOA\)](#) and **ED is entrusted with its enforcement**.
  - This law was enacted to **deter economic offenders from evading the process of Indian law** by remaining outside the jurisdiction of Indian courts.
  - Under this law, the ED is mandated to **attach the properties of the fugitive economic offenders** who have escaped from India warranting arrest and provide for the **confiscation of their properties** to the Central Government.

## How ED Functions under PMLA?

#### ▪ Powers of ED:

- The ED carries out **search (property) and seizure (money/documents)** after it has decided that the money has been laundered, under **Section 16** (power of survey) and **Section 17** (search and seizure) of the PMLA.
  - On the basis of that, the authorities decide if arrest is needed as per **Section 19 (power of arrest)**.
- Under **Section 50** of the PMLA, the **ED can also directly carry out search** and seizure without calling the person for questioning.
  - It is **not necessary to summon the person first** and then start with the search and seizure.
- If the person is arrested, the **ED gets 60 days to file the prosecution complaint** (chargesheet) as the punishment under PMLA doesn't go beyond seven years.
  - If no one is arrested and only the property is attached, then the prosecution complaint along with attachment order is to be **submitted before the adjudicating authority within 60 days**.

#### ▪ Expansion of Power of ED under PMLA:

- The **PMLA** schedule has expanded from **six to 30 offences since 2002**.
  - The ED can now **investigate a range of crimes**, from terrorism to wildlife hunting and copyright infringement.
  - Amendments in 2009 added 'criminal conspiracy', granting the ED authority to probe conspiracy cases.
  - In **2015 and 2018, the ED gained power to seize Indian properties** linked to laundered money acquired abroad.
  - 2019 amendments extended the ED's authority to attach properties earned through criminal activity.
- In April 2023, the Ministry of Finance [expanded the scope of PMLA by adding the activities related to Virtual Digital Assets \(VDA\) and Crypto currency](#) under the Act.
  - By this move, VDA entities could end up dealing directly with enforcement agencies, like ED (Enforcement Director).
- In July 2023, [Goods and Services Tax Network \(GSTN\) was included in the PMLA](#), allowing information sharing between GSTN, ED, and other agencies, modifying Section 66 provisions.

#### ▪ Comparison of Powers of ED and CBI/NIA:

- The [PMLA](#) allows the ED to **take cognizance of any offence** under its wide-ranging schedule across the country, with or without the consent of state governments.
- It has, therefore, been able to register money laundering cases against politicians or activists based on FIRs filed by state police forces — something the **CBI is unable to do** unless **requested by the state government, or ordered by a court** or the **Central Vigilance Commission (CVC)**.
- While the [National Investigation Agency \(NIA\)](#) too has powers to take suo motu cognizance of offences **across the country**, the schedule of the **NIA Act** — that is, the types of offences that it can investigate — is limited to about a dozen offences.

#### ▪ Contentious Provision:

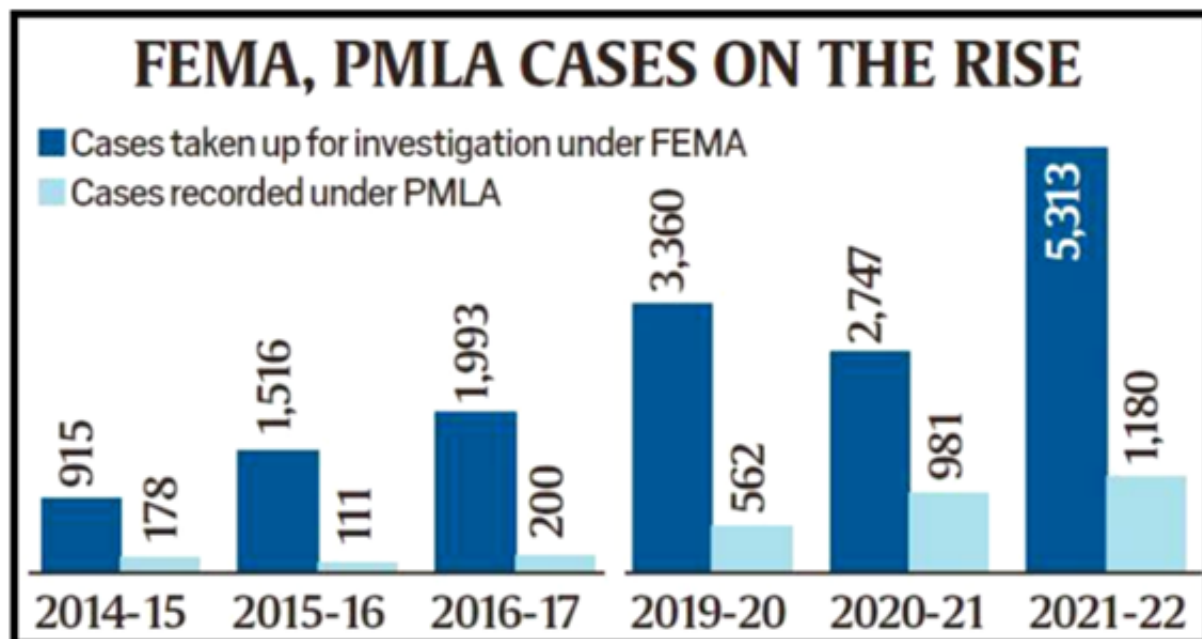
- The PMLA's **provisions on admissibility of statements made by the accused as evidence**, and the **stringent bail provisions** have been the **most contentious**.
- It is the **only Act in the country** in which a **statement recorded before an investigating officer is admissible in court as evidence**. Other laws that contained such provisions, such as TADA and POTA, have long been repealed.
- The provision for bail stipulates that a **magistrate will not grant bail to an accused unless he is convinced that prima facie no case is made out**. This provision was struck down by the Supreme Court on the ground that it presupposed the trial at the stage of bail itself.

## What about ED's Jurisdiction?

- Both **FEMA or PMLA apply to the whole of India**. So, the ED can take action against any person on which this act applies.
  - Cases under FEMA may lie in **civil courts** where PMLA cases will lie in **criminal courts**.
- The agency **has jurisdiction over a person or any other legal entity** who commits a crime.
  - **All the public servants** come under the jurisdiction of the agency if they are involved in any offence related to money laundering.
- **ED can not take an action suo motu**. One has to complain to any other agency or Police first and then ED will investigate the matter and will identify the accused.
  - The ED will investigate the matter and may attach the property of an accused person and also make an arrest and start proceeding with the violation of the provisions of FEMA and PMLA act.
  - The matter will be resolved by way of **adjudication by courts or PMLA courts**.

## Why is the ED being Criticised Lately?

- The **Supreme Court (SC)** is examining allegations of **rampant misuse of PMLA by the government and the Enforcement Directorate (ED)**. Major Allegations include:
  - **Being Used for Ordinary Crimes:**
    - **PMLA is pulled into the investigation of even “ordinary” crimes** and assets of genuine victims have been attached.
    - PMLA was a comprehensive penal statute to counter the threat of money laundering, specifically stemming from trade in narcotics.
      - Currently, the **offences in the schedule of the Act are extremely overbroad**, and in several cases, have absolutely no relation to either narcotics or organised crime.
  - **Lack of Transparency and Clarity:**
    - The **Enforcement Case Information Report (ECIR)** - an equivalent of the FIR - is considered an “internal document” and not given to the accused.
      - The ED **treats itself as an exception to the principles and practises** [of criminal procedure law] and chooses to register an ECIR on its own whims and fancies on its own file.
    - There is also a lack of clarity about **ED’s selection of cases to investigate**.
      - The initiation of an investigation by the ED has consequences which have the potential of curtailing the liberty of an individual.



## What are the Recent Controversies Regarding PMLA and the Powers and Efficiency of ED?

- The PMLA formulated in 2002 has undergone various critical changes from time to time in order to give itself more strength to deal with the offence of money laundering.
  - However, on account of these amendments, several petitions have been filed across the country that question the **almost blanket powers assigned to the ED under PMLA** for searching, seizing, investigating, and attaching assets considered to be proceeds of crimes.
- Moreover, in a recent hearing, the **SC upheld the constitutional validity of the PMLA and ED's power to hold inquiries, arrest people and attach property** (under Section 5 of the Act).
  - The Court stated that Section 5 provides for a balancing arrangement to secure the interests of the person and also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act.
  - It **rejected the argument that ED authorities are police officers** and, hence, a statement recorded by them (Section 50 of the Act) would be hit by **Article 20(3) of the Indian Constitution** which says no person accused of an offence shall be compelled to be a witness against himself (**self incrimination**).
- Additionally, the **conviction rate of the ED under PMLA is very low**, despite thousands of cases registered and people arrested.
  - According to the data quoted by the government in Parliament of India, there were **zero convictions between 2005 and 2013-14**.
  - By 2014-15 to 2021-22, **out of 888 cases under ED, only 23 cases were under conviction**.

## What Reforms can be Brought to the ED?

- It is true that law has given stringent powers to the ED in dealing with the accused that can increase the possibility of political misuse.
  - But **there must be a consensus between the adjudicating authority and the officers of ED** to abide by the constitutionality of provision under PMLA, making the investigation more lucid.
- The **process itself should not become a punishment**. ED's expanded powers should be welcomed with a **greater commitment to expeditiously resolve the cases**, so both the judiciary and enforcement agencies can move forward with speedy trials and convictions.
- There must be a **constant scrutiny over the operations of the Enforcement Directorate** and current disposition whether this clarification will improve the conviction rate (which is right now less than half a percent).
  - And if there will be any lacunas in the operative part, change is the law of nature, these gaps can be filled either through suitable legislation, executive action or revised order of the apex court.

## What Other Investigation Agencies are there in India?

Investigation Agency	Features
<b>Enforcement Directorate:</b>	<ul style="list-style-type: none"> <li>▪ <b>The Directorate of Enforcement (ED) is a multi-disciplinary organization dealing with money laundering and violations of foreign exchange laws.</b> <ul style="list-style-type: none"> <li>◦ It functions under the <b>Department of Revenue of the Ministry of Finance</b>.</li> <li>◦ It is the <b>premier financial investigation agency</b> of the Government of India.</li> <li>◦ The statutory functions of the Directorate include enforcement of following laws:               <ul style="list-style-type: none"> <li>• Conservation of Foreign Exchange and Prevention of Smuggles Act, 1947 (CFEPA)</li> <li>• Foreign Exchange Management Act, 1999 (FEMA)</li> <li>• Prevention of Money Laundering Act, 2002 (PMLA)</li> <li>• Fugitive Economic Offenders Act, 2018 (FEOA)</li> </ul> </li> </ul> </li> </ul>
<b>National Investigation Agency (NIA):</b>	<ul style="list-style-type: none"> <li>▪ It is the <b>Central Counter-Terrorism Law Enforcement Agency of India</b> established to protect <b>the sovereignty, security and integrity of India</b>.</li> </ul>

	<ul style="list-style-type: none"> <li>◦ It includes offences: <ul style="list-style-type: none"> <li>• that affect friendly relations with foreign states.</li> <li>• are against atomic and nuclear facilities.</li> <li>• that involve smuggling of arms, drugs and fake Indian currency.</li> <li>• committed under the statutory laws enacted to implement the resolutions of the United Nations, its agencies and other international organizations.</li> </ul> </li> <li>◦ It was constituted under the <a href="#">National Investigation Agency (NIA)</a>.</li> </ul>
<b>Central Bureau of Investigation (CBI):</b>	<ul style="list-style-type: none"> <li>▪ It is the <b>premier investigating police agency</b> in India.</li> <li>◦ It provides assistance to the <a href="#">Central Vigilance Commission</a> and <a href="#">Central Information Commission</a>.</li> <li>◦ It is also the <b>nodal police agency in India</b> which <b>coordinates investigations</b> in all police stations.</li> <li>◦ Its conviction rate is as high as 65 to 70% and it is comparable to that of the <a href="#">FBI</a>.</li> </ul>
<b>Narcotics Control Bureau (NCB):</b>	<ul style="list-style-type: none"> <li>▪ It was constituted by the Government of India in 1986 under the <a href="#">Narcotic Drugs and Psychotropic Substances Act, 1986</a>.</li> <li>◦ The NCB is the <b>nodal agency on the matter of drug law enforcement</b> in India.</li> <li>◦ It is the <b>apex coordinating agency</b> under the Ministry of Home Affairs.</li> </ul>
<b>Serious Fraud Investigation Office (SFIO):</b>	<ul style="list-style-type: none"> <li>▪ It is a <b>multi-disciplinary organization under the Ministry of Corporate Affairs</b> which deals with the investigation, detection, and prosecution of financial crimes.</li> <li>◦ It is a <b>multi-disciplinary organization</b> under the Ministry of Corporate Affairs which deals with the investigation, detection, and prosecution of financial crimes.</li> <li>◦ It is a <b>multi-disciplinary organization</b> under the Ministry of Corporate Affairs which deals with the investigation, detection, and prosecution of financial crimes.</li> <li>◦ It is a <b>multi-disciplinary organization</b> under the Ministry of Corporate Affairs which deals with the investigation, detection, and prosecution of financial crimes.</li> <li>◦ Section 211 of the <a href="#">Companies Act, 2013</a>, has accorded statutory powers to SFIO.</li> <li>• SFIO also has <b>powers to arrest people for the violation of trust</b>.</li> <li>◦ A White-collar crime is a <b>nonviolent crime committed for financial gain</b> through the violation of trust.</li> </ul>

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

**Q.** Discuss how emerging technologies and globalisation contribute to money laundering. Elaborate measures to tackle the problem of money laundering both at national and international levels. **(2021)**

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