



## Enforcement Directorate

**For Prelims:** [Enforcement Director](#), [Supreme Court](#), [FATF](#), [Money Laundering](#), [Drug Trafficking](#), [FEOA](#).

**For Mains:** Enforcement Director, its functions and Related Issues.

### Why in News?

Recently, the Centre has informed the [Supreme Court \(SC\)](#) that the tenure of the **Chief of Enforcement Directorate (ED)** will not continue in office beyond November 2023.

### What is the Issue?

- In November 2021, the [President of India](#) issued two ordinances allowing the tenure of the **Director of the ED** to be extended from two years to up to five years, with the possibility of three annual extensions.
- This move was upheld by the SC, which allowed the extension of ED Chief but only in **rare and exceptional cases** for a short period.
  - The SC stated that there is no restriction on the Central Government's power to appoint the ED beyond a two-year period. Additionally, they clarified that the phrase "not less than two years" in **Section 25(d) of the Central Vigilance Commission Act, 2003** should not be interpreted to mean "**not more than two years.**"
  - The court said, "there is no fetter on the power of the Central Government in appointing the Director of Enforcement beyond a period of two years".
- The government's recent extension of the tenure is cited as a reason for a pending review by the [Financial Action Task Force \(FATF\)](#)
  - The Union Finance Ministry stated in an affidavit that extension in the term of the director of ED was **necessitated from the administrative standpoint wherein continuity of the head of the organisation is required for several cases which are at crucial juncture** and require historical knowledge and background for supervision of such cases.
  - A newly appointed director **would take considerable time to take stock and acclimatise to the new office** and the working of the ED and could find it difficult to operate at an optimal level of efficiency.
- This decision has been challenged in the SC again, as some are questioning the legality of **extending the tenure beyond what was previously deemed acceptable** by the court. The case is currently pending.

### What is the ED?

- **About:**
  - The 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 ED functions in

## strict compliance with the Constitution and Laws of India.

### ▪ Structure:

- **Headquarters:** ED 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.
- **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:** Two years, but directors' tenure can be extended from two to five years by giving three annual extensions.
  - 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.

### ▪ Functions:

- **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 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.

## What are the Issues related to ED?

### ▪ Misuse of Power:

- The ED has a lot of power and discretion in **investigating economic crimes like money laundering**, and they don't need permission from the government to prosecute politicians or government officials.
- However, this power has been **misused, as even minor crimes have been brought under the purview** PMLA, which was originally meant to combat money laundering related to [Drug Trafficking](#).

### ▪ Lack of Transparency:

- There is also a lack of transparency in how the ED selects cases to investigate, and they have been known to target opposition parties.
- **Convictions in cases by the ED are rare**, but media trials have already ruined the accused's reputation.
  - Between 2005 and 2013-14, there were zero convictions, and between 2014-15 and

2021-22, only 23 cases were under conviction out of 888 cases registered.

▪ **Political Bias:**

- There have been **allegations that political figures who have switched to the ruling party have been given favorable treatment** by the ED. In some cases, these individuals have reportedly been given "clean chits" or seen the ED slow down in their investigations into economic offenses such as money laundering.
- These allegations have raised concerns about potential political bias and lack of independence in the ED's actions.

## Way Forward

- The ED has extensive powers under PMLA, but these should not be used to abuse political opponents. Investigations **should not become punishments, and cases should be resolved quickly to ensure speedy trials** and convictions.
- Fighting corruption requires reforming investigations and ensuring transparency and fairness in the adjudication process. The ED is trying to balance speed with integrity. Rather than **extreme measures**, the solution is **likely to be systemic fixes**.
- Changing the way government agencies operate is **necessary to substantially reduce corruption**.

## 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)**

**Source:** [TH](#)

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