

Enforcement Directorate

[UPSC Notes]

What is Enforcement Directorate?

The ED Department or Directorate of Enforcement (ED) is a multi-disciplinary organization that is responsible for the investigation of cases related to money laundering and foreign exchange law violations.

A number of statutes are enforced by the enforcement directorate. These acts are-

1. The prevention of money laundering act 2002
2. The foreign exchange management Act 1999
3. The foreign exchange Regulation Act 1973
4. The fugitive economic offenders act 2018
5. Sponsoring Agencies under conservation of foreign exchange and prevention of smuggling activities 1974

Functions of Enforcement Directorate

The Enforcement Directorate is a multi-disciplinary organization mandated to investigate offenses of money laundering and violations of the foreign exchange laws. The statutory function of a directorate includes enforcement of the following Acts-

1. **The Prevention of Money Laundering Act, 2002 (PMLA)** - It is a criminal law enacted to prevent money laundering and to provide for confiscation of property derived from money laundering and for matters connected therewith. ED is responsible for conducting the investigations for tracing the assets from the proceeds of crime and making sure to prosecute the offenders.
2. **The Foreign Exchange Management Act, 1999 (FEMA)** - It is a civil law enacted to consolidate and amend the laws relating to facilitating external trade and payments and to promote the orderly maintenance and development of the foreign exchange market in India. ED is also authorized to investigate the suspected contraventions of foreign exchange laws to impose penalties on them.

3. **The Fugitive Economic Offenders Act, 2018 (FEOA)**- The Fugitive Economic Offenders Act is an Indian law that is enacted to prevent the economic criminals in India from evading the Indian codes by staying outside of their jurisdiction. Under this law, the directorate has the power to attach and confiscate the properties of Fugitive economic offenders who have fled away from India and are issued with an arrest warrant.

4. **The Foreign Exchange Regulation Act, 1973 (FERA)**- Up to 31.05.2022, the repealed FERA had two major functions.
 - a. Adjudicating show-cause notices issued under the act for alleged contraventions results in penalties.
 - b. Prosecuting cases brought under the act.

5. **Sponsoring agency under COFEPOSA**- the directorate of enforcement is authorized to sponsor the preventive detentions for the contravention of the Conservation of Foreign Exchange and Prevention of Smuggling Activities 1974.

6. To investigate suspected violations of a provision of the FEMA, 1999 relating to the activities such as a "HAWALA" foreign exchange racketeering, and another form of the violation under FEMA, 1999.

7. To adjudicate cases of violations of erstwhile FERA, 1973 and FEMA, 1999.

Director of ED: Appointment of Enforcement Directorate

The appointment of ED director is based on the provisions of the Central Vigilance Commission Act, 2003

- The Centre appoints the director on the recommendation of a committee, with the Central Vigilance Commissioner as chairperson
- Other committee members are secretaries in the Finance, Home, and Personnel & Training ministries.

ED Director Tenure

The Enforcement Directorate's director has 2 year's security of tenure according to (Central Vigilance Commission Act) 2003, recently an amendment has been taken in it according to which its director's tenure can be increased up to 3 years means total tenure can be 5 year

Challenges for Enforcement Directorate

According to ED officers, getting information on accounts and money stores abroad to establish a trail is the biggest challenge they face.

- In order to get the information about the individuals and of shore and disease the agencies send the letter rogatory to different countries. On behalf of investigative Agencies, the ministry of external affairs processes the letters rogatory from a competent court to the foreign Court. However, most of the letters remain unanswered which hampers the investigation.
- In order to find a money trail the enforcement directorate has to investigate the links that are extremely difficult to find without the proper help and support from the foreign countries as mostly the money is stored offshore. However, the authorities in such countries really share the financial details of anyone under scrutiny as they are not bound to do so.
- There are multiple cases, which are dismissed due to lack of information not provided by the foreign countries-an example of a case being dismissed due to a lack of response from abroad countries is the 2G scam, where the ED failed to establish a trial.
- The enforcement directorate had sent the letter Rotary to 10 countries but Russia Norway Libya Singapore Mauritius be the Isle of Man did not respond but France and Cyprus did respond to that.

Allegations on Enforcement Directorate

The ED has often been attacked for initiating investigations, raiding, and questioning mainly leaders of the opposition parties.

Many opposition leaders such as P. Chidambaram, D.K. Shiv Kumar, Sharad Pawar, Praful Patel, Akhilesh Yadav, and other such leaders of different political parties have been taken under investigation by the enforcement directorate in recent months. And now the enforcement directorate is directly after Rahul Gandhi the former President of the Indian National Congress.

Achievement of Enforcement Directorate

If any agency can be credited for curbing the menace of white-collar crimes in India, then it is only and only ED. Over the last few years, it has shown no hesitation in capturing the big fish, who are responsible for increasing economic inequality in India. The agency, composed of heavyweight officers of India's most coveted administrative posts, has shown no mercy to any politician, whether they are in opposition or they belong to the present ruling government.

Moreover, it has also been one of the effective factors in curbing Chinese investments in India.

- In its investigation of Karti Chidambaram, the former Home Minister allegedly had accepted a bribe of 50 lakh to clear the 300 Chinese visas.
- It was the result of enforcement directorates' efforts in Kashmir that the complete Abdullah family was filtered. Even at present, the enforcement directorate continues its investigation and Farooq Abdullah has to face public humiliation.
- The heavyweight of Congress in Karnataka DK Shiv Kumar was also facing charges under the money laundering act by the enforcement directorate. As for now, his bail has been suspended but the enforcement directorate has still tightened its grip on him.
- It was reported that the enforcement directorate had raided almost 20 locations that belong to close AIDS of Jharkhand Chief Minister on 6 May 2022.
- The enforcement directorate recently arrested a minister in the Aam Aadmi party letting the government Satyendra Jain for the money laundering charges imposed by the enforcement directorate.
- ED is also helping in strengthening national security as well by revealing the scam in geographically important areas like Jammu and Kashmir.
- In very recent times the forward President of the Indian National Congress Rahul Gandhi was taken under custody by the enforcement directorate for the inquiry related to a money laundering case.