Enforcement directorate

Why in news?

There is a spike in the activity of the Enforcement Directorate (ED) in Tamil Nadu which can be seen in the arrest and investigation of two Ministers from the state.

What is the Enforcement Directorate (ED)?

- Enforcement Directorate (ED) is a premier financial investigation agency and economic law enforcement agency of the Government of India.
- **Headquarter -** New Delhi
- **History -** In 1956, an 'Enforcement Unit' was formed in the Department of Economic Affairs.
- It handled the Exchange Control Laws violations under Foreign Exchange Regulation Act of 1947 (later FERA 1973)
- In the year 1957, this Unit was renamed as 'Enforcement Directorate'.
- In 1960, its administrative control was transferred from the Department of Economic Affairs to the Department of Revenue.
- It was regulated under Foreign Exchange Regulation Act (FERA) of 1973 (repealed later).
- The ED currently draws its statutory powers from 3 different acts -
    1. Foreign Exchange Management Act, 1999 (FEMA)
    2. Prevention of Money Laundering Act, 2002 (PMLA)
    3. Fugitive Economic Offenders Act, 2018 (FEOA)
- **Director -** Director is the head of the Enforcement Directorate assisted by special directors.
- The director is appointed in accordance with the provisions of the Central Vigilance Commission Act 2003.
- The Centre appoints the director on recommendation of a high-level committee headed by the Central Vigilance Commissioner.
- The director has a fixed tenure of 2 years and a maximum 3 annual extensions.

What are the powers and functions of ED?

- **Functions -** ED is mandated with investigation of offence of money laundering and violations of foreign exchange laws.
- Enforces the provisions of the PMLA
    - Conducts investigation to trace the assets derived from proceeds of crime and provisionally attach the property.
    - Ensure prosecution of the offenders.
    - Confiscation of the property by the Special court.
- Enforces the provisions of the FEMA

    - Conduct investigation into suspected violations of foreign exchange laws.
    - Adjudicate and impose penalties on those adjudged violations.
- Enforces the provisions of the FEOA
    - ED is mandated to attach the properties of the fugitive economic offenders and confiscate their properties for the central government.
- It is also a sponsoring agency under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA).
- **Quasi-judicial powers -** Section 50 of the PMLA provides powers of a civil court to the ED authorities for summoning persons suspected of money laundering and recording statements.
- The ***Vijay Madanlal Choudhary v. Union of India (2022)*** case observes that the power under Section 50 of PMLA is of the nature of ***'inquiry'*** against the proceeds of crime and is not 'investigation' in strict sense.
- Section 19 and Section 45 of the PMLA permits ED authorities to arrest and grant bail.

What are the differences between CBI and ED?

- Central Bureau of Investigation (CBI) and ED are investigating agencies of the Central Government.
- They both play an important role but have different roles to play.

	CBI	ED
Nature	Not a statutory body	Statutory body
Ministry	Ministry of Personnel, Ministry of Personnel, Pension & Public Grievances	Department of Revenue under the Ministry of Finance
Acts governing	Derives powers from the Delhi Special Police Establishment Act of 1946	Mainly from 2 acts • Foreign Exchange Management Act, 1999 (FEMA) • Prevention of Money Laundering Act, 2002 (PMLA)
Investigates	Anti-Corruption crimes and special crimes under IPC apart from economic crimes.	Only economic crimes. Can carry out searches and confiscate assets.
Economic Crimes	Investigates crime of corruption, economic offences	Investigates offences of money laundering and foreign exchange laws violation
Central Government's role	Needs Central Government notification to initiate investigation	Does not need such notification.

How is a Police investigation different from an ED investigation?

Police	ED
First Information Report (FIR) is required for a cognisable offence before conducting an investigation.	They undertake their investigation for the purpose of gathering materials and tracing the 'proceeds of crime' by issuing summons.

Statement made by an accused to the police is inadmissible as evidence in court.	A statement made to an ED authority is admissible.
A copy of the FIR is accessible to the accused.	The Enforcement Case Information Report is seldom available.

What are the present issues with ED?

- ED cannot be credited with taking timely action against corruption.
- Of late, ED to impart fear among political opponents of the Union government.
- The investigation and prosecution of the predicate offence is done typically by the Central Bureau of Investigation (CBI) or the State Police.
- The ED's focus is shifted from recovering the proceeds of crime to effecting pre-trial arrests and investigating the predicate offence.

  In spite of several high-profile arrests, the ED has only filed charge-sheets after concluding investigation in only 1,142 cases out of the 5,906 cases registered since 2005.

- **Famous cases -** The ED has arrested several politicians including
  - Satyender Jain and Manish Sisodia - Ministers of the Delhi government.
  - Nawab Malik - Former Minister from the Shiv Sena.
  - Magunta Raghava Reddy - YSRCP MP Srinivasulu Reddy's son.
  - V. Senthil Balaji and K. Ponmudy - Ministers of the Tamil Nadu government.

What is the way forward?

- In the past, the CBI was used to impart fear among political opponents and in the process, it earned the nickname 'caged parrot'.
- Statutorily empowered body like ED should reorient its approach to not to go down on the same path.
- To justify their actions and demonstrate their fairness and impartiality it should put all facts in the public domain.
- The actions of ED should be timely, fair and impartial to command credibility among the public.
- The ED should focus more on recovering crime proceeds and redistribute the same to victims.
- The ED authorities must satisfy themselves of the need for arrest as under *Section 19 of the PMLA*.
- Such belief must pass the reasonableness test similar to the test that courts assessing the necessity of remand.

References

1. The Hindu - Selective prosecution: on the ED and T.N. Ministers
2. The Hindu - The authority of ED and usage of PMLA
3. Ministry of Finance - Directorate of Enforcement



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