

**Title: The Expanding Mandate Of The Enforcement Directorate Under PMLA:
An Analysis, Authored By: Prof. Dr Monika Negi, Professor, Panjab University
Swami Sarvanand Giri Regional Centre, Hoshiarpur & Co-Authored By: Ms.
Sanskriti Rana, Research Scholar, Department of Laws, Panjab University,
Chandigarh.**

Email Id(s): monikasinghpu@gmail.com, sanskritirana63@gmail.com.



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Email Id(s): monikasinghpu@gmail.com, sanskritirana63@gmail.com.

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ABSTRACT:

“The Enforcement Directorate, functioning under the Department of Revenue, Ministry of Finance, has transformed from a small unit enforcing foreign exchange laws in 1956 into India's premier body for investigating economic crimes. The Enforcement Directorate wields significant authority for search, seizure, arrest and property attachment, primarily under the Prevention of Money Laundering Act, 2002 (PMLA) as well as the Foreign Exchange Management Act, 1999 (FEMA) and the Fugitive Economic Offenders Act, 2018 (FEOA). Legislative amendments and judicial interpretations have progressively enlarged its mandate, expanding the range of scheduled offences and enhancing operational authority. Even though the ED has played a crucial role in high-profile cases like the Punjab National Bank scam, INX Media and the 2G spectrum allocation dispute, there are still issues with its low conviction rates under PMLA (less than 0.5%), allegations of political misuse, procedural opacity (e.g., non-disclosure of ECIRs) and the reversal of traditional criminal law safeguards in bail provisions.

These difficulties raise serious considerations regarding due process, federal balance and the possibility of overreach. Judicial pronouncements, such as the Vijay Madanlal Choudhury judgement, have affirmed most of the ED's jurisdiction while emphasising the importance of procedural fairness, such as establishing written grounds of arrest and assuring court oversight upon cognizance. Comparative studies with international agencies such as the UK's Serious Fraud Office and the United States' FinCEN demonstrate worldwide best practices for retaining operational independence while maintaining accountability. This paper analyses the ED's expanding jurisdiction, legislative design, landmark judicial scrutiny and federalism issues. It advocates for a calibrated framework that maintains the ED's effectiveness in combating complex financial crimes while incorporating strong oversight, transparency and constitutional safeguards ensuring that anti-money laundering enforcement benefits both economic integrity and the rule of law in India”.

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**Keywords: Accountability, Enforcement Directorate, Financial Crimes,
Judicial Review, Money Laundering.**

I. INTRODUCTION AND EVOLUTION OF THE ENFORCEMENT DIRECTORATE:

The Enforcement Directorate (ED) occupies a central and evolving role in India's financial crime investigation and regulatory landscape.¹ It began in 1956 as the "**Enforcement Unit**" of the Department of Economic Affairs, tasked with enforcing currency control laws under the Foreign **Exchange Regulation Act (FERA) of 1947**. At its inception, the agency was primarily concerned with monitoring and curbing violation of foreign exchange regulations, a key function in the early years of independent India aimed to protect the country's economic stability and foreign exchange reserves. The transition from the Enforcement Unit to the formal Enforcement Directorate in 1957 was a significant institutional milestone that formalized its role and streamlined regulatory enforcement efforts. For many years, the agency operated under the stringent provisions of FERA, which was mainly geared towards controlling foreign exchange through criminal law mechanisms, including rigorous punitive measures for contraventions.² This law reflected the protectionist economic approach of the period, which included strict controls on foreign currency transactions and capital flows. However, massive economic changes in the early 1990s prompted a major shift in India's foreign exchange regulatory system.³ **The Foreign Exchange Management Act (FEMA) of 1999 replaced FERA**, ushering in a more facilitative and management-oriented approach that aimed to encourage orderly external trade and payments while ensuring foreign exchange market stability.⁴ FEMA, designed as a civil regulatory statute, tasked the ED with ensuring

¹ Abhishek Baplawat and Amit Verma, *Law & Order Administration* (Wisdom Press, New Delhi 2022) 1.

² Lalita Devi and Sahibpreet Singh, 'Foreign Exchange and Smuggling Activities in Indian Context' (2023) 6 International Journal of Law, Management & Humanities 1333.

³ Vijay Joshi and Ian Malcolm David Little, *India's Economic Reforms, 1991–2001* (OUP 1996).

⁴ Monika Jain, 'Money Laundering in India: A Multi-Dimensional Advent' (2023) 2(2) Justice and Law Bulletin 51.

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compliance through investigatory and adjudicatory authorities that centered on management rather than Criminalisation, reflecting India's liberalisation and integration into the global economy. The next key step in ED's expansion was the enactment of the **Prevention of Money Laundering Act (PMLA) in 2002**, which substantially widened the agency's powers and scope. The **PMLA** expanded the Enforcement Directorate's authority beyond foreign exchange violations to cover the laundering of proceeds from different predicate offences such as corruption, fraud, drug trafficking, and organized crime. It granted the ED broad criminal investigative powers, including search and seizure, arrest authority and provisional attachment of assets derived from unlawful activities. This Act effectively transformed the ED into a formidable anti-money laundering agency, equipped with quasi-judicial functions and increased enforcement capacities. The expansion continued in 2018 with the **Fugitive Economic Offenders Act (FEOA)**, which authorised the ED to identify and seize the assets of economic offenders who escape Indian jurisdiction to avoid punishment. This law demonstrates India's intention to seal up safe havens for economic offenders by empowering the ED to act on a global scale in collaboration with other nations.

The basis for these consecutive expansions of the Enforcement Directorate's function stems from the growing sophistication, scale, and complexity of financial crimes affecting India's economic security. Globalisation and digitization of financial transactions, together with innovative laundering methods, necessitate the establishment of an agency with comprehensive powers and technical expertise in order to efficiently investigate, prosecute and recover illicit assets. Thus, the ED combines substantial investigative authority with asset recovery and quasi-judicial methods, with the goal of serving as a deterrent to financial crime.⁵ At present, the Enforcement Directorate is a key component of India's economic regulatory system. It works in collaboration with the **Central Bureau of Investigation (CBI)**, the **Financial Intelligence Unit (FIU)**, the **Reserve Bank of India (RBI)** and state law

⁵ Vijaykumar Shrikrushna Chowbe, 'Redefining the Fight Against White Collar Crime: A Moral and Value-Centric Perspective' (2024) SSRN <https://ssrn.com/abstract=4761381> accessed 9 September 2025.

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enforcement authorities. Beyond investigations, the ED is responsible for punishing offenders, suggesting policy changes, and ensuring the integrity of the financial system. The ED's risk-based approach, aligned with India's National Risk Assessment framework and validated by the FATF's 2024⁶ Mutual Evaluation Report, strengthens its investigative precision and operational efficiency, particularly in combating emerging threats such as cyber fraud and crypto-enabled laundering.

II. LEGISLATIVE FRAMEWORK AND EXPANDING MANDATE UNDER PMLA:

The Enforcement Directorate (ED) in India operates within a strong and continuously expanding legal framework that gives it extensive power to investigate, adjudicate, and prosecute financial crimes, including money laundering and foreign exchange violations. This jurisdiction is principally derived from three key legislations: the Prevention of Money Laundering Act of 2002 (PMLA), the Foreign Exchange Management Act of 1999 (FEMA)⁷ and the Fugitive Economic Offenders Act of 2018. Understanding the legislative architecture and the ED's rising power under these statutes is essential for appreciating its critical role in India's fight against complex economic crimes.

II.I THE PREVENTION OF MONEY LAUNDERING ACT, 2002 (PMLA):

The PMLA is the cornerstone of the ED's increased mandate. The Act, enacted to tackle the growing menace of money laundering, grants the ED broad quasi-judicial and investigative powers, placing it at the heart of India's anti-money laundering efforts.

Objectives and Scope: The fundamental goal of the PMLA is to prevent money laundering

⁶ Louis de Koker, *The FATF's Combating of Financing of Proliferation Standards: Private Sector Implementation Challenges in Financial Crime and the Law: Identifying and Mitigating Risks* (Springer Nature Switzerland 2024) 123–166.

⁷ Mehak Chopra, 'Due Diligence v Client-Attorney Privileges: The Changing Role of Professionals under the Ambit of the Prevention of Money Laundering Act 2002' (2023) 4 Jus Corpus Law Journal 83–96.

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and facilitate the confiscation of proceeds of crime, thereby deterring economic crimes. Money laundering is defined in **Section 3** of the Act as any process that conceals the illicit origins of money in order to depict it as lawful wealth. **Section 4** prescribes rigorous imprisonment and fines for those found guilty of money laundering.

Powers and Functions: The ED can search and seize assets, documents, and bank accounts suspected of money laundering. **Section 5** authorises the provisional attachment of properties in order to prevent their disposal. **Section 6** establishes an authority to confirm or reject provisional attachment orders. **Section 12** mandates banking companies, financial institutions, and intermediaries to maintain records and report suspicious transactions. **Sections 16-18** grants the ED powers to conduct surveys, searches, and seizures of properties and individuals suspected of money laundering. **Section 19** authorizes designated ED officers to arrest individuals believed to have committed offenses under the PMLA. **Section 43** provides for the designation of Courts of Session as Special Courts to try offenses under the PMLA. **Section 45** declares offenses under the PMLA as cognizable and non-bailable, with stringent conditions for granting bail.

Expansion of Scheduled Offences: Initially addressing a small number of predicate offences involving foreign exchange violations, organised crime and narcotics, the schedule has grown to include over thirty offences. These currently include corruption, terrorism financing, human trafficking, counterfeit currency, environmental crimes and cybercrime.⁸ This extension broadens the ED's investigative reach to a variety of interconnected economic crimes that generate illegal proceeds.

Recent Amendments and Challenges: The Act has been amended to incorporate digital assets and virtual currencies, recognising crypto assets as new tools for illicit financing. However, procedural rigidity, such as strict bail standards and the non-disclosure of Enforcement Case Information Reports (ECIRs), raises concerns about due process and protection.

⁸Saarthak Mongia and Palak Chhabra, 'Powers of Enforcement Directorate under the Prevention of Money Laundering Act, 2002' (2021) 3 Indian Journal of Law & Legal Research.

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II.II FOREIGN EXCHANGE MANAGEMENT ACT OF 1999

(FEMA):

FEMA, which replaced the Foreign Exchange Regulation Act (FERA), redirected India's foreign exchange Regulation from a criminalised control regime and towards a civil regulatory framework more appropriate for a liberalized economy.⁹

Regulatory Aim: FEMA regulates current and capital account transactions to facilitate orderly foreign exchange management. Unlike FERA's criminal strategy, FEMA focuses on compliance and imposes civil penalties for violations.¹⁰

ED's Role: The ED's role is to enforce FEMA regulations by investigating suspected violations, often without requiring proof of criminal intent. It has the authority to impose penalties, conduct search, and seize related assets. By integrating enforcement within a facilitative economic governance framework, FEMA requires the ED to strike a balance between regulation and economic openness and cross border flows.

II.III FUGITIVE ECONOMIC OFFENDERS ACT OF 2018

(FEOA):

The FEOA addresses the rising problem of economic offenders fleeing Indian jurisdiction, enabling the ED to take swift action against such evasion.

Key features: The Act, which applies to acts worth more than ₹100 crore, allows for the attachment and confiscation of designated fugitives' properties in India and overseas. Special Courts hear these cases to ensure prompt action. The Act also limits fugitives legal redress in civil courts, which increases deterrence.

Expansion of Mandate and Power:

The ED's mandate has grown significantly since its inception, particularly with the expansion of scheduled offences under the PMLA. This expansion acknowledges the growing complexity of financial crimes, including corruption, terrorism financing, cybercrime, and

⁹Sumit K Majumdar, 'Foreign Exchange Legislation Transformation and Enterprise Demography in India' (2008) 25(1) European Journal of Law and Economics 39–56.

¹⁰Ananya Singh, 'FEMA- An Overview and the Role of RBI' (2021) 2 Jus Corpus Law Journal 738–750.

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environmental crimes related to money laundering. As a result, the ED holds powers typically exceeding traditional criminal agencies, combining broad investigative authority with quasi-judicial tasks such as attachment and prosecution.¹¹ The ED's adoption of a scientific risk-based methodology in case selection is a strategic move to improve operational efficiency. This methodology ensures that investigative resources are prioritised for high-risk, high-impact cases. In FY 2024-25, the ED launched 775 new investigations, attached assets worth ₹30,036 crore and filed 333 prosecution complaints, highlighting its focus on threats that jeopardise economic stability and security. In 2024-25, the ED investigated 24 fugitives, declaring 14 as fugitive economic offenders and confiscating assets worth over ₹900 crore.¹² Furthermore, the ED has expanded its enforcement scope to include digital assets and cryptocurrency-related crimes, ensuring compliance with global anti-money laundering standards and technical realities. These expansions underline the agency's commitment to addressing both existing and emerging risks to India's financial architecture.

III. CHALLENGES AND OUTLOOK:

While the ED's extensive mandate strengthens India's ability to combat sophisticated crimes, it has also sparked controversy. Critics highlight procedural overreach, potential politicization, low conviction rates and civil liberties concerns. Judicial interventions have begun to implement crucial measures to ensure fairness. There is an urgent need for institutional strengthening through transparent appointments, accountability and inter-agency collaboration. The legislative framework established by PMLA, including its comprehensive schedule of offences, FEMA's regulatory enforcement and FEOA's requirements enables the Enforcement Directorate to take decisive action against sophisticated financial crimes. However, this power necessitates a careful balance of enforcement with strong procedural safeguards, judicial monitoring and adherence to constitutional concepts such as federalism

¹¹Arushi Sharma, Kirti Singh and Swarnav Bhuyan, 'Role of Prosecution in Criminal Trial: A Comparative Study of France and India' (2022) 4(3) Indian Journal of Law & Legal Research1.

¹² Anand Shankar, 'Economic Offences in India: A Critical Analysis' (2023) 6(3) International Journal of Law Management and Humanities3032.

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and fundamental rights. The ED's authority is being expanded, which provides potential to better India's response to economic crime while also creating significant governance concerns that will require continuous legislative, administrative and judicial attention.

III.I NON-DISCLOSURE OF ENFORCEMENT CASE

INFORMATION REPORTS:

A major procedural issue is the non-disclosure of Enforcement Case Information Reports (ECIRs), the ED's counterpart to traditional First Information Reports (FIRs) used in police investigations. Courts have consistently emphasised that accused individuals are frequently refused access to ECIRs and related documents, hampering their ability to mount a fair defence and undermining investigative transparency. This lack of disclosure creates serious constitutional concerns under Article 21 of the Indian Constitution, which ensures the right to a fair trial, including the right to know the allegations levelled.¹³ While judicial bodies recognise the need of confidentiality during investigations, they emphasise a balanced approach that includes eventual disclosure mechanisms subject to supervision by the judiciary, guaranteeing fairness without jeopardising investigative integrity.¹⁴

III.II BAIL PROVISIONS AND REVERSAL OF THE PRESUMPTION OF INNOCENCE:

The PMLA's bail requirements differ significantly from the conventional criminal justice system established by the Code of Criminal Procedure (CrPC). Money laundering offences are categorized as non-bailable, with the burden placed on the accused to justify bail, reversing the fundamental presumption of innocence. In *Nikesh Tarachand Shah vs. Union of India*,¹⁵ the Supreme Court ruled that stringent twin bail conditions were unconstitutional, citing conflicts with fundamental rights.

¹³ Anjali Kaushik and Abhishek Gupta, 'Critical Analysis of the Right to a Fair Trial' (2022) 4(6) Indian Journal of Law and Legal Research1.

¹⁴Margaret Allars, 'Reputation, Power and Fairness: A Review of the Impact of Judicial Review upon Investigative Tribunals' (1996) 24 Federal Law Review 235.

¹⁵[2017] SCC OnLine SC 1355.

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III.III MANDATE FOR WRITTEN GROUNDS OF ARREST:

The Supreme *Court in Pankaj Bansal vs. Union of India*¹⁶, has ruled that the ED must give arrested persons with written grounds for arrest at the earliest. This procedural safeguard is crucial for ensuring that individuals are promptly informed of the reasons for their detention, allowing for effective judicial review and defence preparation. This need serves as a core safeguard against arbitrary arrests, reinforcing respect for human liberty and fair investigation norms.

III.IV RELATIONSHIP TO THE CODE OF CRIMINAL PROCEDURE (CRPC) SAFEGUARDS:

Though the ED's powers under the PMLA often operate independently of the traditional criminal investigative framework established by the CrPC, judicial pronouncements make clear that this independence is not also. The Supreme Court has specifically recognised that the ED is not a police force and so is immune from certain procedural requirements such as mandatory FIR registration. Nonetheless, it has required the ED to uphold the essential constitutional safeguards established in **Articles 14 and 21**, which ensure due process, fairness, and protection against arbitrariness. This nuanced judicial approach necessitates that ED¹⁷ operations be narrowly justified when deviating from CrPC norms and carefully balanced with the protection of individual rights.¹⁸

III.V FEDERAL TENSIONS AND CRITICISMS OF ED OPERATIONS:

The Enforcement Directorate's (ED) expanding central role in investigating economic crimes under legislation such as the Prevention of Money Laundering Act (PMLA) has raised

¹⁶[2023] SCC OnLine SC 1244.

¹⁷Anil Balan, 'Balancing Efficiency and Access to Justice: An Analysis of Summary Judgment and the Right to a Fair Trial' (2024) Queen Mary Law Journal 45.

¹⁸Stefano Ruggeri, *Criminal Investigations, Interference with Fundamental Rights and Fair Trial Safeguards in the Proceedings of the European Public Prosecutor's Office: A Human Rights Law Perspective in The European Public Prosecutor's Office: The Challenges Ahead* (Springer International Publishing, Cham 2018) 201.

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significant federal tensions and popular criticism.¹⁹ While the ED is empowered to investigate complex financial crimes throughout the country, its centralised authority and operational practices have strained Centre-State relations under India's constitutional federal system. Furthermore, persistent claims of political exploitation, procedural opacity, violations of due process rights, and especially low conviction rates continue to cast a shadow on the ED's legitimacy and efficiency. This section delves into these crucial concerns in depth, stressing the ramifications for the agency's credibility, federal balance, and rule of law.

III.VI POLITICAL MISUSE AND ALLEGATIONS OF SELECTIVE TARGETING:

One of the most persistent criticisms levelled at the ED is that it is used selectively to target political opponents and influential state officials who oppose the ruling central government. According to reports and studies, the ED's investigations or summonses disproportionately involve opposition party leaders, dissenting politicians or regional party members. These allegations have been reinforced by public statements, judicial observations and media reporting, contributing to a loss of public trust in the agency's impartiality and independence. Such accusations of political bias not only delegitimize the ED's enforcement work but also undermine democratic ideals by potentially suppressing political dissent and federal-state cooperation. When the agency's wide powers, including arrests, freezing assets and raids are politically motivated, they can intimidate public actors and undermine institutional autonomy. Critics argue that selective enforcement risks transforming an important financial crime investigation agency into a quasi-political instrument.

III.VII VIOLATIONS OF FEDERAL PRINCIPLES AND JURISDICTIONAL OVERREACH:

The ED's enforcement operations have sparked considerable debate concerning federalism in India, where authority is legally divided between the Union and the States. While financial

¹⁹Narender Kumar, 'Examining Money Laundering Practices through a Legal Perspective: Scrutiny under the ED's Oversight' (2024) 1(1) International Journal for Public Policy, Law and Development 22–31.

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crimes frequently cross regional boundaries and require central intervention, courts and commentators have identified instances of jurisdictional overreach.²⁰ The ED has occasionally undertaken investigations into matters principally within the purview of state police or regulatory authorities, without adequate or clear central nexus or permission.

Such actions blur the demarcation between state and union powers, raising constitutional questions and political frictions. The Supreme Court and various high courts have addressed this problem by emphasising the need for enforcement agencies in federal countries such as India to exercise jurisdiction while respecting constitutional boundaries. Critics argue that the ED's intrusion into state subjects without proper coordination or justification disrupts the federal balance and fosters distrust between the Centre and the States.

III.VIII TRANSPARENCY DEFICITS AND DUE PROCESS

CONCERNS:

Transparency and adherence to due process are essential to ensuring justice and constitutional integrity. However, the ED's investigative procedures have been criticised for being opaque. A major concern is the non-disclosure *of Enforcement Case Information Reports (ECIRs)* to the accused, which contrasts with the impetus behind *First Information Reports (FIRs)* in ordinary criminal law. This secrecy restricts the ability of people under investigation to know the case against them, limiting their ability to mount an appropriate defence and violating the principles of natural justice and fair trial contained in Article 21 of the Constitution. Furthermore, stringent provisions of the PMLA, such as classifying money laundering offences as non-bailable and reversing the presumption of innocence in bail policies, pose due process concerns. The cumbersome bail requirements require defendants to prove their innocence rather than the prosecution proving guilt, which is a considerable divergence from foundational criminal jurisprudence. Further allegations stem from cases in which arrests and property seizures occur swiftly and without timely judicial scrutiny, compounding concerns about arbitrariness. Critics contend that the agency's independence

²⁰Stephen Schneider, 'Privatizing Economic Crime Enforcement: Exploring the Role of Private Sector Investigative Agencies in Combating Money Laundering' (2006) 16 Policing and Society 285.

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should not be at the expense of transparency, accountability or respect for legal safeguards, as failure to uphold these principles risks miscarriages of justice and public alienation.

III.IX LOW CONVICTION RATES AND ENFORCEMENT

EFFECTIVENESS:

While the ED has initiated a large number of investigations and prosecutions under the PMLA,²¹ conviction rates remain alarmingly low, estimates suggest less than 0.5% in recent years. The substantial disparity between case initiation and successful prosecution raises questions about investigative quality, evidence standards and prosecutorial efficacy. Several reasons contribute to the low conviction rates. Financial crimes are inherently complex, with layered transactions and sophisticated laundering strategies that pose challenges to law enforcement. Insufficient investigative skills, an overreliance on procedural arrests, delays in trial proceedings and a lack of coordination between investigative and prosecuting agencies worsen the problem. Low conviction rates reinforce concerns that the agency's emphasis might be skewed towards arrests and coercive tactics than securing solid judicial outcomes. They also intensify perceptions of political exploitation, as many cases languish in courts without being resolved. This scenario necessitates an immediate recalibration of investigation strategy, capacity building, and judicial process streamlining to ensure that the ED's mandate is translated into effective enforcement and deterrent.

Implications of Federal Tensions and Criticism:

The confluence of these challenges has far-reaching consequences. The erosion of trust in the ED undermines public confidence in economic crime enforcement, jeopardising the legitimacy²² of India's financial regulatory and criminal justice systems. Federal tensions risk undermining the cooperative federalism required for comprehensive crime control.

²¹ Anwesha Choudhury and Sarthak Sharma, 'Civil Implications of PMLA: Envisaging the Financial Death of an Accused' (2024) 6 National Law University Delhi Student Law Journal 21.

²² Lawrence W Sherman, 'Trust and Confidence in Criminal Justice' (2002) 248 National Institute of Justice Journal 22.

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Email Id(s): monikasinghpu@gmail.com, sanskritirana63@gmail.com.

Procedural opacity and due process flaws jeopardise constitutional freedoms, while enforcement inefficiencies reduce deterrent against money laundering.

Addressing these concerns requires a multidimensional approach that includes law reforms to reinforce procedural safeguards, independent supervision measures to identify and prevent political meddling, enhanced transparency and stronger Centre-State coordination frameworks.²³ Furthermore, strengthening investigative and prosecutorial capacities, as well as judicial reforms, can raise conviction rates and improve justice delivery.

IV. JUDICIAL OVERSIGHT: BALANCING ENFORCEMENT AND RIGHTS:

Judicial scrutiny has been critical in limiting the ED's formidable powers, preventing abuse while preserving the agency's ability to prosecute complex financial crimes effectively. Courts have struck a careful balance by affirming the ED's operational autonomy while requiring prior court approval for post-cognizance arrests, requiring transparency through written arrest grounds and emphasising the non-negotiability of constitutional rights even in specialised economic crime investigations.

Nikesh Tarachand Shah vs. Union of India²⁴:

The Supreme Court in Nikesh Tarachand Shah case established the framework for judicial oversight of the Enforcement Directorate's powers by addressing the PMLA's restrictive bail provisions. The Court overturned Section 45(1) of the Act, which imposed stringent twin conditions for granting bail: the court had to be satisfied that the accused was not guilty and that it was not likely that they committed the offence. The Court determined that such limitations violated Articles 14 and 21 of the Constitution because they imposed arbitrary restrictions on personal liberty without due process.

Vijay Madanlal Choudhury vs. Union of India²⁵:

²³ Sameer Sharma, 'Independence and Temporality: Examining the PMLA in India' (2020) 23 Journal of Money Laundering Control 208.

²⁴AIR 2017 SC 5500.

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The Supreme Court decision in *Vijay Madanlal Choudhury* is a cornerstone in delineating judicial control on the ED's jurisdiction. The Court upheld the ED's statutory authority under the PMLA to arrest and search in the course of investigations. However, it emphasised the inviolable need for fairness and transparency, requiring that arrested individuals be provided with written grounds for arrest upon the court's taking cognizance of a case. Furthermore, the verdict established an important procedural safeguard by requiring the ED to obtain prior judicial approval before conducting arrests after judicial cognizance. These criteria promote accountability and avoid arbitrary deprivation of liberty while balancing enforcement efficacy and individual rights.

Pankaj Bansal vs. Union of India²⁶:

Copy of 'Written grounds of Arrest' is furnished to the arrested persons as a matter of course.

Arvind Kejriwal vs. Directorate of Enforcement²⁷:

"Reasons to believe" should be furnished to the arrestee.

Manish Sisodia vs. Directorate of Enforcement²⁸:

In order to avail the Right to fair trial, the accused cannot be denied the Right to have inspection of documents including the 'unrelied upon documents'.

The Union of India through the Assistant Director vs. Kanhaiya Prasad²⁹:

Bail in the money-laundering without considering the seriousness of the crime and rigors of section 45 cannot be vindicated.

Tarsem Lal vs. Directorate of Enforcement³⁰:

The Supreme Court held that ED cannot arrest an accused after a Special Court takes cognizance of a PMLA complaint. This represents a significant limitation on the agency's arrest powers during the trial stage.

²⁵[2022] SCC OnLine SC 929.

²⁶[2023] SCC OnLine SC 1244.

²⁷Criminal Appeal No 2493 of 2024.

²⁸SLP (Crl) 8781 of 2024.

²⁹Criminal Appeal No 728 of 2025.

³⁰Criminal Appeal No 2608 of 2024.

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V. COMPARATIVE AND INTERNATIONAL PERSPECTIVES ON ACCOUNTABILITY:

Financial crime investigation agencies around the world face the challenge of striking an appropriate balance between wielding strong enforcement powers and guaranteeing accountability, operational independence and transparency. The Enforcement Directorate, which is tasked with combating complex economic offences, can draw significant lessons from international analogues known for embedding robust oversight and safeguarding democratic governance.

V.I UNITED KINGDOM- SERIOUS FRAUD OFFICE (SFO):

The SFO is the primary agency in England, Wales and Northern Ireland that investigates and prosecutes serious fraud, bribery and corruption. Proceeds of Crime Act, 2002, provides powers but with greater judicial oversight. Its operational independence is statutorily mandated, with the Director nominated through a meritocratic and transparent procedure for a defined term, eliminating the possibility of political intervention.³¹ While the SFO operates independently on a daily basis, it is accountable to Parliament through regular reporting and oversight by parliamentary committees. Such a framework enables the SFO to manage complex financial investigations autonomously while sustaining institutional transparency and public trust.³²

V.II UNITED STATES- FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN):

FinCEN is a bureau under the United States Department of the Treasury responsible for protecting the financial system from money laundering and terrorism financing risks. Bank Secrecy Act and related legislation provide extensive powers. It follows precisely defined statutory mandates and engages in extensive international cooperation, including participating

³¹ Sujee Zain Jadwin, *A Study of the Anti-Money Laundering Framework in South Africa and the United Kingdom* (PhD thesis, University of Pretoria 2016).

³²Mark Button, Branislav Hock and David Shepherd, Replacing the Serious Fraud Office: The Case for a New Approach to Serious Economic Crime (IEA Discussion Paper No 127, 2024).

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in the Financial Action Task Force (FATF).³³ Congressional committees provide oversight, the Government Accountability Office (GAO) conducts regular audits, and the Treasury Inspector General supervises. Although senior leadership is politically appointed, FinCEN's operations are founded on transparency, rule-based compliance and rigorous oversight mechanisms.³⁴

V.III AUSTRALIA- AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE (AUSTRAC):

AUSTRAC is Australia's primary agency responsible for detecting, deterring and preventing money laundering, terrorism financing and other serious financial crimes. It reports to the Department of Home Affairs and is governed by the Anti-Money Laundering and Counter-Terrorism Financing Act, which establishes a clear legal framework for its operations. AUSTRAC's leadership, including the Chief Executive Officer, is selected through a merit-based process and operates with statutory independence to ensure operational effectiveness. The agency maintains accountability by reporting to the Australian Parliament, conducting compliance assessments, and being overseen by external audit agencies such as the Australian National Audit Office. AUSTRAC also actively participates in global cooperation, exchanging intelligence with overseas partners to reduce financial crime risks while maintaining transparency and integrity in Australia's financial system.³⁵

V.IV CANADA- FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA (FINTRAC):

FINTRAC is Canada's national financial intelligence unit, collecting, analysing and disclosing financial information to combat money laundering, terrorism financing and risks to Canada's economic security. It acts independently under the Proceeds of Crime (Money

³³ Jeffrey R Simser, 'Canada's financial intelligence unit: FINTRAC' (2020) 23 Journal of Money Laundering Control 298.

³⁴ Financial Crimes Enforcement Network, 'Financial Crimes Enforcement Network' (10 May 2007) <https://www.fincen.gov> accessed 10 September 2025.

³⁵ Paul Latimer, 'Australia: Australian Transaction Reports and Analysis Centre (AUSTRAC)' (1995) 3 Journal of Financial Crime 306.

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Laundering) and Terrorist Financing Act, which explicitly specifies its functions and powers. The Director of FINTRAC is appointed through a process meant to ensure impartiality and the organization's governance is bolstered by statutory reporting requirements to Parliament. The Office of the Auditor General, parliamentary committees and the Finance Minister offer oversight to ensure that the organization's operations are transparent and accountable. FINTRAC works closely with both domestic and international partners, contributing to global financial intelligence networks.³⁶ India's leadership role has been strengthened by the ED's participation in international forums such as the GlobE Network and ARIN-AP, as well as FATF recognition in 2024 as a country under "regular follow-up" with 'substantially effective' ratings for its risk-based enforcement and asset recovery frameworks. These developments strengthen India's status as a global leader in financial crime deterrence while emphasising the importance of systemic checks and balances.

VI. CONCLUSION:

The pathway forward necessitates a balanced framework that enables the ED to efficiently combat sophisticated financial crimes while preserving civil liberties, judicial fairness and the Centre-State interactions inherent in India's federal structure. This calls for the incorporation of constitutional safeguards and human rights standards into enforcement actions, continuous judicial review in line with evolving jurisprudence, fostering collaborative federalism for trust and coordination and adaptable policy mechanisms to combat emerging economic crime trends in the face of rapid technological change. Reimagining the Enforcement Directorate as a credible, transparent and effective anti-money laundering agency necessitates unwavering dedication to these reforms. International experience demonstrates that financial crime enforcement agencies can operate with substantial power while maintaining stringent accountability and transparency standards. These agencies uphold democratic values and effectiveness by integrating statutory independence, parliamentary scrutiny, judicial

³⁶ Jeffrey R Simser, 'Canada's financial intelligence unit: FINTRAC' (2020) 23 Journal of Money Laundering Control 298.

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review and transparency. India's Enforcement Directorate stands to benefit significantly from adopting similar framework tailored to its constitutional and socio-political context. The ED may improve its credibility and effectiveness by focussing reforms on independence, oversight, procedural clarity and federal respect ensuring that anti-money laundering operations advance economic integrity without jeopardising the rule of law or fundamental rights.

VII. THE WAY FORWARD:

The Enforcement Directorate (ED), India's premier financial crime investigation agency, stands at a crossroads where operational efficacy must be balanced with fairness, accountability and constitutional fidelity. The multiple challenges it faces, including allegations of political misuse, procedural opacity, poor conviction rates, and federal tensions, underline the urgent need for comprehensive reforms. This section outlines key policy recommendations for improving the ED's efficiency and fairness, strengthening judicial and parliamentary oversight, increasing transparency, responsibly leveraging technology and envisioning a future in which robust financial crime control respects constitutional freedoms and federal principles.

Policy Recommendations for Improving ED's Efficiency and Fairness:

- 1. Professionalize and de-politicize Leadership:** To protect the ED from political influence, leadership appointments should be transparent and merit-based, with fixed tenures. Establishing an autonomous selection committee comprised of representatives from the judiciary, legislature, and executive can ensure accountability and operational independence.
- 2. Strengthen Investigative Capacity:** Enhancing specialized training, forensic accounting expertise, data analytics capabilities and international cooperation will improve investigative rigour and prosecution success. Moving away from an

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overreliance on arrests and towards evidence-based case building is essential for raising conviction rates.

- 3. Institutionalize uniform procedures:** Developing and enforcing standard operating procedures with clear timelines, documentation protocols, and victim assistance mechanisms will promote transparency and fairness in investigations.

Strengthening Judicial and Parliamentary Oversight:

- 1. Mandatory Judicial Authorization for Arrests and Attachments:** To prevent arbitrary actions and protect personal freedoms, all arrests and asset seizures post-judicial cognizance should require prior court approval.
- 2. Regular Parliamentary Reporting:** The ED should provide periodic, comprehensive reports to designated parliamentary committees. Provisions for handling sensitive information securely would ensure democratic scrutiny without jeopardising ongoing investigations.
- 3. Establish independent oversight bodies:** An autonomous commission entrusted with reviewing complaints, monitoring procedural compliance and recommending reforms can boost public trust and enforcement accountability.

Enhancing Transparency, Disclosure Norms and Citizen Trust:

- 1. Disclosure of Enforcement Case Information Reports (ECIRs):** Accused individuals must have access to and review relevant ECIRs and investigation documents under judicial supervision to ensure fair trial and due process.
- 2. Publish Statistical Data:** Routine public Disclosure of case statistics, conviction rates, asset recovery figures and other performance measures to improve accountability and public awareness.
- 3. Engage Civil Society:** Collaborations with legal aid groups, academic institutions, and media can raise awareness, promote reform, and develop a transparent culture.

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Leveraging Technology While Ensuring Data Protection and Privacy:

- 1. Advanced Digital Tools:** Adoption of artificial intelligence, blockchain for verification and sophisticated data analytics can streamline investigations and detect complex money laundering networks.
- 2. Data Privacy Protocols:** Robust policies and technical safeguards to secure personal data, aligning with global best practices and evolving Indian data protection laws.
- 3. Cybersecurity Measures:** Strengthened IT security will protect sensitive investigative data against breaches that could compromise investigations or violate rights.

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