Directorate of Enforcement

November 9, 2018

[Manifest Pedagogy]

National Herald case, the Vijay Mallya scam, PNB scam involving diamantaire Nirav Modi and his uncle, Mehul Choksi etc are in news which have brought up the issue of redefining the role of security agencies and their mandate both in India and International arena (Interpol). UPSC may directly ask the role and implementing agencies in mains and issues like Red Corner Notice by Interpol may be focused on in prelims.

In news:

The ED made it to the headlines for its continuous actions against politicians and scam accused.

Placing in the syllabus

Paper 3: Money laundering and its prevention.

Static Dimensions

1. Role and mandate of Enforcement Directorate
2. Key features of Money Laundering
3. Features of FEMA
4. International Treaties against Terror Financing

Current Dimensions

1. Fugitive Economic offenders Act, 2018
2. Activism of ED

Content

Directorate of Enforcement is a specialized financial investigation agency under the Department of Revenue, Ministry of Finance, Government of India, which enforces the following laws: –

- Foreign Exchange Management Act,1999 (FEMA)
- Prevention of Money Laundering Act, 2002 (PMLA)
- Fugitive Economic Offenders Act, 2018
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974(COFEPOSA)
- Cooperation to foreign countries

Organisational Setup

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.

Key Terms

Money laundering

Money laundering is essential for criminal organizations who wish to use illegally earned money effectively. Dealing in large amounts of illegal cash is inefficient and dangerous. The criminals need a way to deposit the money financial institutions, yet they can only do so if the money appears to come from legitimate sources.

There are three steps involved in the process of laundering money: *placement*, layering and integration. Placement refers to the act of introducing “dirty money” (money obtained through illegitimate, criminal means) into the financial system in some way. Layering is the act of concealing the source of that money by way of a series of complex transactions and bookkeeping tricks. Integration refers to the act of acquiring that money in purportedly legitimate means.

FEMA: The main objective of Foreign Exchange Management Act (FEMA) is to facilitate external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. FEMA deals with provisions relating to procedures, formalities, dealings, etc. of foreign exchange transactions in India. The transactions relating to foreign exchange have been classified under FEMA into two main categories, viz., (1) Current Account Transaction, (2) Capital Account Transaction.

PMLA: The Prevention of Money Laundering Act, 2002 [PMLA] mandates that the investigation of the offence of money laundering be linked to the Scheduled Offences investigated by the concerned Central or State Law Enforcement Agencies. The scheme of PMLA thus necessitates inter-agency coordination to take effective action against persons who are found by the Law Enforcement Agencies to be involved in criminal activity. Such action under PMLA entails attaching and confiscating tainted assets, and prosecuting persons/entities for the offence of money laundering.

Financial Intelligence Unit – India (FIU-IND) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analysing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.

Fugitive Economic Offenders: A fugitive economic offender is an individual who has committed some specified offence(s) involving an amount of one hundred crore rupees or more and has absconded from India or refused to come back to India to avoid or face criminal prosecution in India.

A Fugitive Economic Offender is a person declared so by a ‘Special Court’ set up under the Prevention of Money-laundering Act (PMLA), 2002, against whom an arrest warrant has been issued in respect of any of the economic offences provided in the schedule to Fugitive Economic Offenders Bill, 2018 and who has left India so as to avoid criminal prosecution, or being abroad, refuses to return to India to face criminal prosecution.

Other provisions under the Act:

1. *making an application before the special court for a declaration that an individual is a fugitive economic offender;*
2. *attachment of the property of a fugitive economic offender and proceeds of crime;*
3. *issue of a notice by the special court to the individual alleged to be a fugitive economic offender;*
4. *confiscation of the property of an individual declared as a fugitive economic offender or even the proceeds of crime;*
5. *disentitlement of the fugitive economic offender from defending any civil claim; and*
6. *appointment of an administrator to manage and dispose of the confiscated property under the act.*

Analysis

1. *The act bars an FEO from filing and defending civil claims before it. This might compromise with article 21 where right to life also includes the right to access justice.*
2. *The confiscation of property particularly the property collectively owned by shareholders or creditors (secured and unsecured) and whether the central government will share the sale proceeds to these shareholders is a matter of concern.*
3. *The act does not require the authorities to obtain search warrants, this is not in line with the provisions of CRPC 1973. It might lead to planting of evidence and harassment.*
4. *The act leads to immediate confiscation of property which is different from all other earlier provisions which have two year time gap after proclamation as*

absconder. Leading to punishment without proper trail in few cases.

COFEPOSA: In the era of 1970 to 1980 , when smuggling activities were at the top and the Foreign Exchange of India was at the lowest position, the Government of India passed " COFEPOSA, 1974". But in this liberalized era the Act has lost its significance.

The Act gives wide powers to the executive to detain a person on mere suspicion of smuggling. This Act has been criticized by various Human Right activists and organizations for being draconian. The Act has given special protection by including the same in the 9th schedule to the Constitution of India.

International Co-Operation: In response to mounting concern over money laundering, the Financial Action Task Force (FATF) on Money Laundering was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations, which set out the measures national governments should take to implement effective anti-money laundering programmes. India is an active member of the FATF.

Government of India is committed to tackle the menace of Money Laundering and has always been part of the global efforts in this direction. India is signatory to the following UN Conventions, which deal with Anti Money Laundering / Countering the Financing of Terrorism:

1. International Convention for the Suppression of the Financing of Terrorism (1999)
2. UN Convention against Transnational Organized Crime (2000)c
3. UN Convention against Corruption (2003).

Test yourself: Mould your thoughts

Money laundering and foreign exchange regulation would be futile without international cooperation. Critically examine the statement highlighting various Agreements and Conventions on these issues.