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ECONOMIC OFFENCE ENFORCEMENT AND JUDICIAL OVERSIGHT IN INDIA: EXAMINING THE ROLE OF THE ENFORCEMENT DIRECTORATE

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I. ABSTRACT

*The Enforcement Directorate (ED) has emerged as one of India's most powerful financial crime investigation agencies, especially under the framework of the Prevention of Money Laundering Act, 2002 (PMLA). While the ED's mandate includes tackling sophisticated economic offences, its aggressive rise since 2014 has triggered serious debate regarding its operational transparency, constitutional legitimacy, and political neutrality. This paper examines whether the ED is fulfilling its intended role as a financial watchdog or functioning increasingly as a political weapon. Relying on official data, recent court rulings, and media investigations, the paper highlights key patterns in enforcement trends, including a sharp surge in cases against political opposition figures, low conviction rates under PMLA, and controversial amendments passed through Money Bills. It also reviews high-profile cases such as the INX Media scandal, the ongoing challenges before the Supreme Court in *Karti P. Chidambaram v. ED*, and the ED Kochi Unit bribery case involving Assistant Director Shekhar Kumar. Comparative insights are drawn from international best practices to assess institutional accountability. The paper concludes with recommendations for reforming the ED's framework to align with principles of fairness, transparency, and federalism, thereby preventing its misuse and restoring public confidence in India's anti-corruption apparatus.*

II. KEYWORDS

Enforcement Directorate, PMLA, political misuse, corruption, federalism, money laundering, accountability.

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III. INTRODUCTION

In recent years, the Enforcement Directorate (ED) has gained unprecedented visibility and influence in India's legal and political discourse. Established in 1956 to enforce the Foreign Exchange Regulation Act (FERA), the ED now operates under three major statutes: the Foreign Exchange Management Act, 1999 (FEMA), the Prevention of Money Laundering Act, 2002 (PMLA), and the Fugitive Economic Offenders Act, 2018 (FEOA). Its evolving mandate has made it a central agency in the fight against economic offences such as money laundering, foreign exchange infringements, and financial fraud. However, its expanded powers have also led to controversy.² The agency has frequently been maligned for disproportionately targeting political opponents of the central government, often initiating action during election cycles or periods of political turmoil. The Supreme Court's 2022 ruling in *Vijay Madanlal Choudhary v. Union of India*³ upheld the ED's wide-ranging powers, including search, seizure, arrest, and the admissibility of statements made to ED officials under Section 50 of the PMLA. Yet, this judgment sparked constitutional concerns about due process, protection against self-incrimination, and the misuse of procedural powers. While ED's annual reports and data showcase an aggressive enforcement record with a reported 775 new PMLA investigations and 333 prosecution complaints in 2024-25 alone, and assets worth over ₹1.5 lakh crore provisionally attached only 47 cases have been adjudicated, and convictions were secured in just 34, raising doubts about the agency's efficacy versus its disruptive power.⁴ This paper explores the ED's rise as both a necessary financial watchdog and a potential political tool. It scrutinises legal developments, high-profile cases, and recent incidents of alleged internal corruption, such as the ED Kochi Unit

² R. N. S. & V. K. SINGH, 'Civil Enforcement Action against Corporate Corruption: A Legislative Lacunae in India' (2020) 6 *International Journal of Transparency and Accountability in Governance* 1, Available at SSRN

³ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 386.

⁴ K. SHANKAR, M. RAWAT and A. MEHRA, 'India: Pivotal Amendments Signal Strict Approach to Anti-Corruption' (2024) *Global Investigations Review*
<https://globalinvestigationsreview.com/review/the-asia-pacific-investigations-review/2025/article/india-pivotal-amendments-signal-strict-approach-anti-corruption> accessed 14 May 2025

bribery scandal involving Assistant Director Shekhar Kumar. It also draws comparative insights from global enforcement models to highlight systemic gaps in independence, accountability, and oversight within India's enforcement ecosystem. By examining the ED's operations through legal, political, and institutional lenses, this study aims to answer a fundamental question: Is the ED a genuine guardian of India's economic integrity, or has it become a selectively unleashed instrument.

A. Research Objectives

This study aims to analyse the statutory mandate and expanding powers of the Enforcement Directorate under the PMLA, FEMA, and FEOA, and to assess their compatibility with constitutional safeguards. It examines enforcement trends, particularly the gap between investigations, asset attachments, and convictions, and evaluates the effectiveness of judicial oversight. The study further explores allegations of political selectivity and compares India's enforcement framework with international models to propose reforms ensuring accountability and rule-of-law compliance.

B. Research Questions

1. Are the powers exercised by the Enforcement Directorate consistent with constitutional guarantees of due process and personal liberty?
2. Does the PMLA framework provide adequate procedural safeguards against arbitrary enforcement?
3. How effective is judicial oversight in regulating the ED's investigative and coercive powers?
4. What factors contribute to the low conviction rate under the PMLA?

C. Research Hypotheses

1. The broad powers granted to the ED under the PMLA, without adequate safeguards, increase the risk of arbitrary enforcement.
2. Judicial deference in economic offence cases has weakened traditional criminal law protections.

D. Research Methodology

The study adopts a doctrinal and analytical approach, examining statutory provisions, constitutional principles, and judicial decisions. This is supplemented by analysis of official enforcement data, select case studies, and comparative evaluation of international anti-money laundering frameworks. Secondary sources such as academic literature, policy reports, and credible media investigations are also relied upon.

E. Review of Literature

The literature on the Enforcement Directorate and the PMLA highlights an ongoing tension between effective control of economic offences and the protection of constitutional liberties. While early studies justified the PMLA as a necessary tool to combat complex and transnational financial crimes, later scholarship has raised serious concerns about the expansion of executive powers and the dilution of traditional criminal law safeguards. Academic and judicial analyses point to issues such as reverse burden of proof, stringent bail conditions, prolonged asset attachment, and judicial deference, which affect due process and personal liberty.

Empirical studies further reveal a sharp gap between investigations and convictions, alongside allegations of selective enforcement, particularly in politically sensitive cases. Comparative literature underscores the absence of independent oversight and accountability mechanisms in India's enforcement framework. Overall, literature supports the need for strong anti-money laundering laws but stresses the importance of embedding them within robust rule-of-law safeguards.

IV. HISTORICAL EVOLUTION AND LEGAL FRAMEWORK OF THE ENFORCEMENT DIRECTORATE

The Enforcement Directorate (ED), India's premier agency for investigating money related crimes, was originally established on 1st May 1956 as the "*Enforcement Unit*" under the Department of Economic Affairs, Government of India. Initially tasked with enforcing the Foreign Exchange Regulation Act, 1947 (FERA), its early mandate

focused on curbing violations of foreign exchange control laws. In 1957, it was renamed the Directorate of Enforcement, and by 1960, it came under the Department of Revenue, Ministry of Finance, where it continues to operate today. The repeal of FERA and the enactment of the Foreign Exchange Management Act, 1999 (FEMA) marked a significant shift in India's approach from criminal prosecution to regulatory oversight.⁵

FEMA decriminalised most foreign exchange violations, treating them as civil offences. While this reform softened the ED's approach under FEMA, the enactment of the Prevention of Money Laundering Act, 2002 (PMLA) sharply enhanced its criminal law enforcement capacity. With the introduction of the Fugitive Economic Offenders Act, 2018 (FEOA), ED was further empowered to confiscate properties of individuals who evade prosecution by fleeing the country, especially in cases involving amounts exceeding ₹100 crore.

The PMLA, 2002, is the cornerstone of the ED's current jurisdiction. Under Section 3 of the Act, money laundering is defined as any process involving "proceeds of crime" that are either directly or indirectly attempted to be projected as untainted property. Section 5 allows for provisional attachment of such assets, and Section 50 authorizes ED officers to summon individuals and record statements, even without filing a First Information Report (FIR). These quasi-judicial and investigative powers have raised serious legal and constitutional concerns over the years. Since 2014, there has been a dramatic expansion in the ED's reach and the scope of PMLA itself.

Amendments introduced through Finance Acts passed as Money Bills (a process questioned in *Roger Mathew v. South Indian Bank Ltd.*) have significantly broadened the definitions of offences and diluted procedural protections. For example, the Explanation added to Section 3 by the Finance Act, 2019 effectively altered the interpretation of the main offence without formally amending it, allowing prosecution even in cases where the accused had not projected or claimed the proceeds as untainted property. These amendments have been challenged as

⁵ V. KRISHNA, 'No More Shortcuts: Addressing Corruption in India' (2025) *UNODC Frontpage*

unconstitutional, particularly because of the method of enactment bypassing Rajya Sabha scrutiny.⁶

The landmark Supreme Court judgment in *Vijay Madanlal Choudhary v. Union of India* (2022) upheld the core provisions of PMLA, reinforcing ED's authority to arrest, attach assets, and record confessions without the procedural safeguards typical in criminal jurisprudence. Although the Court acknowledged that ED officers are not "police officers" under the law, it upheld the admissibility of statements recorded under Section 50, thus denying accused persons the benefit of Article 20(3) protections against self-incrimination. Critics argue that this blurs the line between investigative powers and constitutional safeguards, especially when the Enforcement Case Information Report (ECIR) is not even disclosed to the accused.

Further questions were raised in the *Review Petition by Karti P. Chidambaram*, which highlighted multiple constitutional issues, including the retrospective application of offences, the non-application of the Code of Criminal Procedure (CrPC), and the problematic "twin conditions" for bail under Section 45 of PMLA.⁷ The petition argued that these restrictions violate Article 21 by inverting the burden of proof onto the accused and denying anticipatory bail even in non-heinous economic offences.

These legal disputes continue to fuel a broader concern that the ED's framework is evolving beyond the bounds of democratic oversight and due process. "The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."⁸

⁶ K. SHANKAR et al., 'India: Pivotal Amendments Signal Strict Approach to Anti-Corruption' (2024) *Global Investigations Review*.

⁸ SCC ONLINE TIMES, <https://www.sconline.com/blog/post/2022/07/29/prevention-of-money-laundering-act-section-45-twin-conditions-upheld-supreme-court-legal-news-bail-research-updates/#:~:text=The%20twin%20conditions%20for%20release%20on%20bail,that%20Section%2045%20applies%20to%20anticipatory%20bail>, accessed 23 Dec 2025.

The historical evolution of the ED reflects India's shifting priorities from foreign exchange regulation to global-standard anti-money laundering enforcement. However, this evolution has also come with increasingly concentrated powers, diluted judicial scrutiny, and growing concerns over political misuse and constitutional propriety. The legal framework that once sought to protect the economy now faces allegations of subverting civil liberties in the name of enforcement.⁹

V. ENFORCEMENT DISCRETION AND INSTITUTIONAL NEUTRALITY

One of the most persistent criticisms faced by the Enforcement Directorate (ED) in recent years is the allegation of selective targeting, particularly against political leaders and entities opposed to the ruling central government. While the agency's mandate under the PMLA and other statutes is intended to be apolitical and rooted in financial scrutiny, empirical data and high-profile case trends suggest a disproportionate focus on individuals associated with opposition parties, especially in the lead-up to elections. From 2014 to 2025, the number of ED investigations rose sharply.¹⁰

While this may reflect a legitimate ramping up of anti-corruption efforts, it has also coincided with the initiation of probes against senior political figures such as those from the Indian National Congress, Trinamool Congress, Aam Aadmi Party, and Shiv Sena (Uddhav faction), among others. Remarkably, investigations were often launched during or just before major state and national elections raising concerns about the timing and intent behind these actions.¹¹ Even more telling is the contrast

⁹ Institute of Legal Education, 'The Role of the Enforcement Directorate in Combating Economic Crimes and Corruption in India' (2025) *ILE Journal*

¹⁰ Reuters, 'Anti-Money Laundering Watchdog Calls on India to Speed Up Prosecutions' (*Reuters*, 19 September 2024) <https://www.reuters.com/world/india/anti-money-laundering-watchdog-urges-india-speed-up-prosecutions-2024-09-19/> accessed 10 May 2025

¹¹ Institute of Legal Education, 'The Role of the Enforcement Directorate in Combating Economic Crimes and Corruption in India' (*ILE Journal*, 2025) <https://iledu.in/the-role-of-the-enforcement-directorate-in-combating-economic-crimes-and-corruption-in-india/> accessed 23 May 2025

in conviction rates versus the volume of Enforcement Case Information Reports (ECIRs) filed. According to the ED's 2024-25 Annual Report, while the agency initiated over 7771 Cases investigations between 2014 and 2024, and provisionally attached assets worth over ₹1.5 lakh crore, only 47 cases were adjudicated, with 34 resulting in convictions a conviction rate of 93.6% among decided cases in 2025 but a minuscule rate when measured against total filings. This discrepancy has led critics to argue that ED actions often function more as deterrent tools and political pressure mechanisms, rather than efficient instruments of justice.¹²

A critical case that illustrates this politicisation narrative is the INX Media case involving senior Congress leader Karti P. Chidambaram.¹³ The ED's role in this case was challenged in a *Review Petition* before the Supreme Court, wherein the petitioner alleged procedural impropriety, violation of constitutional safeguards, and misuse of PMLA's expansive definitions. The Appellate Tribunal under the Prevention of Money Laundering Act (PMLA) upheld the Enforcement Directorate's (ED) attachment of Karti Chidambaram's land and property in Jorbagh in Delhi and seven bank accounts in the INX Media bribery case.

Dismissing the appeal filed by Karti, the Tribunal has ratified ED's attachment orders. Furthermore, the 2025 bribery allegations against Assistant Director Shekhar Kumar of the ED Kochi Zonal Office have exposed systemic weaknesses in the agency's internal governance. According to the Vigilance and Anti-Corruption Bureau's investigation, a Kollam-based cashew exporter, Aneesh Babu, who was facing proceedings under the PMLA, alleged that ED officials demanded a bribe of approximately ₹2 crore through intermediaries in return for settling his case.

In May 2025, the VACB arrested three intermediaries, namely Wilson Varghese, Mukesh Kumar (a Rajasthan-based intermediary), and Renjith Warriar, a Kochi-based chartered accountant, and named Shekhar Kumar as the first accused in the remand report. Although he has not yet been arrested, the case remains under

¹² Law Commission of India, *Report No. 277: Reforms in Family Law* (2018)

<http://lawcommissionofindia.nic.in/reports/Report277.pdf> accessed 17 May 2025

¹³ Karti P Chidambaram v Enforcement Directorate, *Review Petition in PMLA Batch Cases*, October 2025

investigation. This episode has intensified public concern that even the ED, entrusted with combating financial crime, is vulnerable to internal corruption, thereby undermining institutional credibility. Nevertheless, such cases have deepened public suspicion that the ED is neither as impartial nor as insulated from influence as it ought to be.¹⁴

For example, the Tamil Nadu sand mining case saw ED summoning District Collectors, prompting the Madras High Court to call it a “fishing expedition.”¹⁵ While the Supreme Court later stayed the High Court’s ruling and backed the ED’s summons, the judicial split reflects the ongoing federal tension and legal ambiguity surrounding ED operations.¹⁶

In essence, the ED’s image has transformed from that of a financial law enforcement body into a politically contentious entity. Its pattern of enforcement appears to selectively intensify scrutiny on opposition leaders while rarely touching those aligned with the ruling establishment. Such a trend, even if legally justifiable, risks delegitimizing the ED in public perception and undermining trust in India’s anti-corruption architecture.

¹⁴ The Hindu, *Corruption Case Takes Dramatic Turn as VACB Names ED Kochi Unit Official as Key Accused in Remand Report* (May 18, 2025), <https://www.thehindu.com/news/national/kerala/corruption-case-takes-dramatic-turn-as-vacb-names-ed-kochi-unit-official-as-key-accused-in-remand-report/article69586655.ece> (accessed Oct. 8, 2025).

¹⁵ Associated Press, ‘A Modi Rival is Arrested. Now, Supporters of the Opposition Leader are Protesting in India’s Capital’ (*AP News*, 15 April 2024) <https://apnews.com/article/3227e705b58b3925a78e4517b2a30572> accessed 23 May 2025

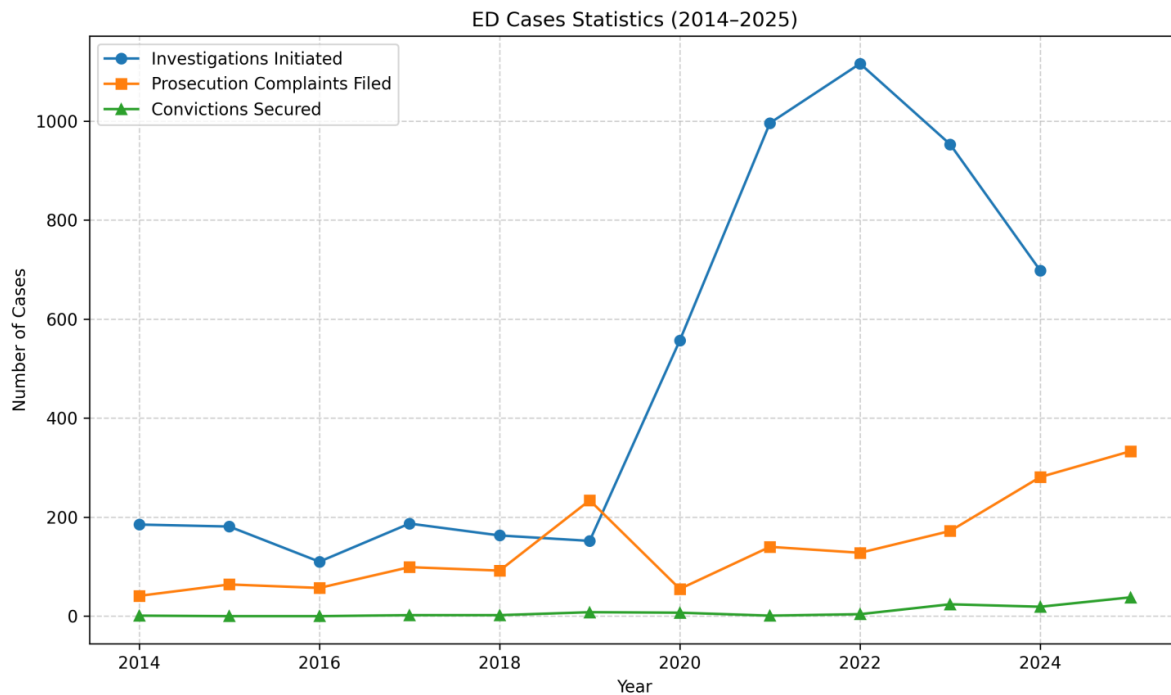
¹⁶ Times of India, ‘Supreme Court: Trend of ED Making Allegations Against Accused Without Evidence’ (Times of India, 6 May 2025) <https://timesofindia.indiatimes.com/india/supreme-court-trend-of-ed-making-allegations-against-accused-without-evidence/articleshow/120910380.cms> accessed 8 May 2025

Here are the shared data of cases from year 2014 to year 2025 in which ECIR has been reported and actions are taken as under:¹⁷

Year	Enforcement Case Information Report	Prosecution Complaints Filed	Convictions Secured ¹⁸
2014	185	41	1
2015	181	64	0
2016	110	57	0
2017	187	99	2
2018	163	92	2
2019	152	234	8
2020	557	55	7
2021	996	140	1
2022	1116	128	4
2023	953	172	24
2024	698	281	19
2025	775	333	38

¹⁷ Directorate of Enforcement, *Annual Report 2024–25* (Enforcement Directorate 2025), pp-105

¹⁸ Government of India, Ministry of Finance, Department of Revenue, Lok Sabha, Un-Starred question no. 75, https://sansad.in/getFile/loksabhaquestions/annex/186/AU75_MXDirm.pdf?source=pqals, accessed 24 Dec 2025



¹⁹(Source: Directorate of Enforcement Annual Report 2025)

VI. INTERNAL CHALLENGES AND INSTITUTIONAL LIMITATIONS

The credibility of any law enforcement agency depends not just on the volume of cases it handles, but on the legality, impartiality, and transparency with which it operates. In the case of the Enforcement Directorate (ED), its expansive powers under the Prevention of Money Laundering Act, 2002 (PMLA) and its growing role in high-profile prosecutions have placed it under intense legal and constitutional scrutiny.²⁰ Allegations of internal corruption, as surfaced in the 2025 ED Kochi Unit bribery case involving Assistant Director Shekhar Kumar, where a Kollam-based cashew exporter alleged a ₹2 crore bribe demand through intermediaries, have further exposed the fragile integrity mechanisms within the institution, raising the question: *who watches the watchdog?*

¹⁹ Law Commission of India, *Report No. 277: Reforms in Family Law* (2018)

<http://lawcommissionofindia.nic.in/reports/Report277.pdf> accessed 17 May 2025

²⁰ Times of India, 'Udaipur MP Seeks ED Probe into Tribal Party's Finances' (*Times of India*, 6 May 2025) <https://timesofindia.indiatimes.com/city/jaipur/udaipur-mp-seeks-ed-probe-into-tribal-partys-finances/articleshow/120909047.cms> accessed 10 May 2025

VII. ABSENCE OF PROCEDURAL SAFEGUARDS IN ED OPERATIONS

ED is not being a Police officer or police agency. There is no provision under PMLA for ED to seek remand of an accused into its own custody, under section 167 Cr.P.C (Code of Criminal Procedural) 1973 or section 187 of BNSS (Bharatiya Nagrik Suraksha Sanhita) 2023. It is not mandatory for ED to provide an ECIR (Enforcement Case Information Report) to the accused person. But it has to disclose the reasons and often denies anticipatory bail citing Section 45 of the PMLA. Section 24 of PMLA states that an accused person has burden to prove his innocence, this is contrary to established criminal law principles of innocent, until proven guilty.

These procedural gaps were challenged in the landmark case of In Nikesh Tarachand Shah v. Union of India,²¹ the Supreme Court examined the constitutional validity of the twin bail conditions contained in Section 45(1) of the Prevention of Money Laundering Act, 2002. The Court found that the provision imposed an unduly onerous burden on the accused at the bail stage by requiring the court to record a prima facie satisfaction of innocence, thereby substantially undermining the presumption of innocence and personal liberty guaranteed under Article 21. The Court also held the provision to be arbitrary under Article 14, as the rigours of the twin conditions was linked to the scheduled offences rather than to the offence of money laundering itself, resulting in a lack of rational nexus with the object of the statute. On this reasoning, Section 45(1) was declared unconstitutional, and bail under the PMLA was left to be governed by ordinary principles of criminal procedure. Subsequently, in Vijay Madanlal Choudhary v. Union of India,²² the Supreme Court revisited the validity of Section 45 in the backdrop of the 2018 legislative amendment, which removed the reference to scheduled offences and made the twin conditions directly applicable to the offence of money laundering. Upholding the amended provision, the Court held that the defect identified in

²¹ Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1

²² Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 353

Nikesh Tarachand Shah stood cured and that the stringent bail conditions constituted a permissible restriction on personal liberty in view of the serious and transnational nature of money laundering. The Court further clarified that the rigour of Section 45 applies to all forms of bail, including anticipatory bail, thereby marking a clear departure from general bail jurisprudence. While the presumption of innocence was not expressly negated, the judgment accepted a statutory dilution of traditional criminal law safeguards, reflecting a shift towards a more restrictive approach in economic offences under the PMLA.

VIII. SECTION 50 PMLA AND THE ISSUE OF SELF-INCRIMINATION

Another critical provision is Section 50 of the PMLA, which empowers ED officers to summon any person, compel them to give statements, and treat those statements as admissible evidence. In *Kathi Kalu Oghad*²³ and *Nandini Satpathy*²⁴ case, the Supreme Court upheld the right against self-incrimination under Article 20(3), emphasizing that no person accused of an offence can be compelled to testify against them. However, in *Vijay Madanlal*, the Court controversially held that ED officers are not “police officers” and that statements recorded under Section 50 are not hit by Article 20(3) or Section 25 of the Indian Evidence Act. This departed from settled constitutional jurisprudence, exposing accused persons to compelled testimony without adequate safeguards.²⁵

IX. STRUCTURAL ASPECTS OF OVERSIGHT AND INSTITUTIONAL INDEPENDENCE

Unlike independent bodies such as the Election Commission or Comptroller and Auditor General, the ED is not a constitutional body and reports directly to the Department of Revenue under the Ministry of Finance. This lack of structural insulation makes the ED vulnerable to executive influence, especially when handling cases involving political opponents of the ruling government. There is no statutory

²³ *State of Bombay v Kathi Kalu Oghad* AIR 1961 SC 1808

²⁴ *Nandini Satpathy v P.L. Dani* (1978) 2 SCC 424

²⁵ Government of India, *FAQs on the Prevention of Money Laundering Act* (Ministry of Finance 2022)

grievance redressal mechanism, no independent complaints authority, and no publicly accountable ethics framework within the ED. In *K.A. Najeeb* (2021) case²⁶, the Court emphasized that constitutional courts retain powers under Articles 32 and 226 to grant bail even where statutory restrictions apply, reiterating that fundamental rights override legislative limitations.

X. CONSEQUENCES OF INSTITUTIONAL WEAKNESS

The implications of these structural and procedural shortcomings are severe. They:

1. Undermine public faith in economic enforcement
2. Allow selective prosecution and coercive bargaining
3. Disincentivise cooperation from legitimate businesspersons
4. Allow internal corruption, like the Kochi case, to go unchecked due to lack of whistleblower protection and oversight

Without transparent procedures, internal audits, and judicial accountability, ED risks function not as a rule-based investigative agency, but as a coercive apparatus vulnerable to both political manipulation and personal corruption.

XI. FEDERALISM, CONSTITUTIONAL RESTRAINT, AND ED'S EXPANDING POWERS

India's constitutional structure is rooted in the principle of cooperative federalism, where the Centre and the States are envisioned as coordinate sovereigns functioning within their respective spheres. However, the increasingly aggressive role of central enforcement agencies like the Enforcement Directorate (ED) has prompted serious concerns about centrally coercive federalism, where the Union's powers encroach upon State autonomy under the guise of national interest or financial regulation.

²⁶ *K.A. Najeeb v Union of India* (2021) 3 SCC 713

XII. COLOURABLE EXERCISE OF POWER AND ABUSE OF STATUTORY MACHINERY

The doctrine of “colourable legislation” first elaborated in *K.C. Gajapati Narayan Deo case* states that what cannot be done directly cannot be done indirectly. The ED’s use of PMLA powers in cases where no “proceeds of crime” are proven, or where even the predicate offence is under investigation by State authorities, raises questions of constitutional malfeasance cloaked in statutory authority.²⁷ When the ED issues summons to State officials like District Collectors as seen in the Tamil Nadu sand mining case despite no proven linkage to scheduled offences under PMLA, it begins to resemble a colourable exercise of power, violating the constitutional boundaries between federal and state jurisdiction.

XIII. COOPERATIVE AGAINST CENTRALLY COERCIVE FEDERALISM

The Indian federal structure, while not “pure federalism” like the United States, was intended to function through cooperation and mutual respect. This concept of cooperative federalism was emphasized by the Supreme Court in *State of West Bengal v. Union of India*²⁸, where the Court held that “the Indian Constitution has not just distributed powers; it has also created an expectation of mutual restraint.” However, recent trends suggest a drift toward coercive federalism, where central agencies bypass State governments and directly summon or investigate State officers. The ED’s frequent involvement in politically sensitive cases particularly in opposition-ruled states without coordination with or consent from State police or administration, undermines this cooperative framework. Such actions not only erode federal comity but also threaten to distort the political equilibrium envisioned by the Constitution.²⁹

²⁷ *K.C. Gajapati Narayan Deo v State of Orissa* AIR 1953 SC 375

²⁸ *State of West Bengal v Union of India* AIR 1963 SC 1241

²⁹ Constitution of India, arts 20(3), 21, 131

XIV. ARTICLE 131 AND INTER-GOVERNMENTAL DISPUTES

Under Article 131 of the Constitution, the Supreme Court has exclusive authority to adjudicate disputes between the Union and one or more States. While historically underutilized, this provision is gaining relevance in the context of central agency overreach.³⁰ For instance, the State of West Bengal filed a case in Article 131 challenging the CBI's jurisdiction to investigate without State consent. A similar constitutional challenge could be initiated regarding the ED's summons to State officials or seizure of State-administered assets without prior consultation. In a federal structure, the entry list under the Seventh Schedule must be respected. While Entry 93 of List I gives Parliament jurisdiction over offences related to money laundering,³¹ law and order is a State subject under Entry 1 of List II. When central agencies like the ED begin to exercise overlapping powers in areas where no direct Union interest is demonstrated, it becomes constitutionally problematic.³²

XV. THE PHILOSOPHICAL IMPERATIVE OF FEDERAL RESTRAINT

The Constitution is not merely a legal instrument, but a philosophical framework grounded in principles of liberty, autonomy, and decentralization. The founding discussions of the Constituent Assembly, particularly those led by Ambedkar and K.T. Shah recognized that an overly centralized state could mutate into a coercive regime. The presence of independent State institutions and the diffusion of power were seen as essential checks against authoritarianism. When enforcement agencies like the ED operate without meaningful checks, refuse to share information such as the ECIR, and deny the application of routine procedural protections, they challenge not just statutory norms but the spirit of the Constitution. In such a scenario, restraint is not a limitation, it is a constitutional obligation. A federal democracy thrives not only on rule-based governance but also on trust between governments.

³⁰ Ibid

³¹ Ministry of Finance, *White Paper on Black Money* (Government of India 2012)

³² The Hindu Bureau, 'Corruption Case Takes Dramatic Turn as VACB Names ED Kochi Unit Official as Key Accused in Remand Report' (*The Hindu*, 17 May 2025)

<https://www.thehindu.com/news/national/kerala/corruption-case-ed-kochi-unit-accused-vacb/article68145647.ece> accessed 17 May 2025

For that trust to endure, central agencies must act as partners in governance, not as instruments of executive dominance. Ensuring that enforcement is exercised within the bounds of constitutional morality and respect for federal boundaries is essential for sustaining India's democratic fabric.³³

XVI. COMPARATIVE INTERNATIONAL MODELS OF ANTI-CORRUPTION ENFORCEMENT

To evaluate the role of the Enforcement Directorate (ED) within a global framework, it is instructive to compare its structure, powers, and accountability mechanisms with anti-corruption and financial crime enforcement agencies in other democratic jurisdictions. Such comparisons reveal that while India has adopted broad investigative powers, it lags significantly behind in institutional safeguards, transparency, and independence that define credible enforcement systems globally.³⁴

A. United Kingdom:

Serious Fraud Office (SFO) in the UK is an independent government department that investigates and prosecutes serious and complex fraud, bribery, and corruption. Crucially, it operates under the supervision of the Attorney General, and its investigations are subject to rigorous judicial oversight. SFO officers must apply to a court for warrants related to search and seizure, and targets have access to legal counsel at all stages of inquiry. Moreover, the UK introduced the Bribery Act 2010, which clearly defines offences, including failure of corporations to prevent bribery. Unlike India's PMLA, the UK's laws do not conflate preventive enforcement with coercive investigation, and accused persons are guaranteed due process and adversarial trial rights. The SFO also has a dedicated Whistleblower Programme and public annual reports that disclose its conviction rates and expenditures, promoting institutional accountability.³⁵

³³ V Sudhish Pai, *Constitutional Supremacy: A Revisit* (Eastern Book Company 2019)

³⁴ United Nations Convention Against Corruption (UNCAC), adopted 31 October 2003, entered into force 14 December 2005

³⁵ UK Parliament, *Bribery Act 2010*

B. United States:

Financial Crimes Enforcement Network (FinCEN) and FBI White-Collar Crime Units financial crimes are addressed through multiple bodies, including FinCEN (under the Department of Treasury) and the Federal Bureau of Investigation (FBI). While FinCEN handles intelligence and coordination, enforcement and arrests are typically carried out by the FBI's white-collar crime units. Fourth and Fifth Amendment protections strictly limit the scope of enforcement.³⁶ Any seizure of property or interrogation without Miranda warnings is liable to be struck down. Investigative agencies are subject to internal oversight bodies, inspector generals, and Congressional committees. These mechanisms ensure that enforcement is not weaponized against political actors without consequence.³⁷ The Foreign Corrupt Practices Act (FCPA) mandates extensive corporate compliance, and U.S. regulators often engage in deferred prosecution agreements (DPAs), encouraging reform over punishment. By contrast, ED's approach in India has shown a tendency toward pre-trial punishment via asset attachment, often before any judicial finding of guilt.

C. Singapore:

Corrupt Practices Investigation Bureau (CPIB) operates under the Prime Minister's Office but maintains substantial functional independence. All detentions or coercive actions by CPIB require approval from the Attorney General, and detainees are informed of charges and rights promptly. Singapore's system also enforces statutory time limits on investigations, limiting prolonged harassment. What distinguishes CPIB is its zero-tolerance policy toward internal corruption, its merit-based staffing, and auditable case records, which are periodically reviewed by parliamentary committees. The ED, on the other hand, has no such external audit structure, leading to a lack of remedial action even in serious cases such as the 2025 Kochi scandal.³⁸

³⁶ USA, *Foreign Corrupt Practices Act 1977*

³⁷ Financial Action Task Force (FATF), *Recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (2022)

³⁸ The Hindu (n 12)

XVII. STRENGTHENING RULE-OF-LAW SAFEGUARDS AND INSTITUTIONAL ACCOUNTABILITY IN INDIA

Legal checks and balances such as court warrants, disclosure of investigation reports, and adversarial hearings are essential for fair enforcement. Internal integrity mechanisms, such as inspector general's or independent ethics committees, strengthen public trust. Statutory clarity, rather than vague definitions of offences or retrospective application of laws, is vital for rule-of-law compliance.³⁹ Transparency through reporting, public metrics, and case audit trails ensures that agencies are accountable to both Parliament and citizens. India's ED lacks nearly all of these safeguards. Its powers of search, seizure, and arrest without FIRs, non-disclosure of ECIRs, and bail conditions that invert the burden of proof, have no parallel in most modern democracies. This makes it prone to both misuse and mistrust, even when the underlying enforcement objectives are legitimate.⁴⁰

XVIII. LEGAL AND POLICY RECOMMENDATIONS FOR REFORMING THE ENFORCEMENT DIRECTORATE

The evolving profile of the Enforcement Directorate (ED) in India's anti-corruption and financial crime regime necessitates a thorough institutional overhaul. While its powers under statutes like the Prevention of Money Laundering Act, 2002 (PMLA) and the Fugitive Economic Offenders Act, 2018 (FEOA) are essential for combating sophisticated economic crimes, the agency's unchecked authority, procedural opacity, and growing politicisation have increasingly drawn criticism from legal scholars, the opposition, and even the judiciary.

If ED functions as a legitimate and effective instrument of justice, its structure and operation must be urgently aligned with constitutional guarantees, judicial accountability, and global enforcement standards. There is a pressing need for the establishment of an independent oversight mechanism. Presently, the ED has been

³⁹ Indian Express Editorial, 'ED: An Agency with Power but Little Restraint' (*Indian Express*, 18 April 2024)

⁴⁰ H.M. Seervai, *Constitutional Law of India*, vol 1 (Universal Law Publishing 2019)

functioning under the Department of Revenue, Ministry of Finance, giving the executive excessive influence over the agency's operations. Unlike constitutionally protected institutions such as the Election Commission or the Comptroller and Auditor General (CAG), the ED lacks structural independence. To ensure neutrality and credibility, a parliamentary oversight committee or an autonomous enforcement regulatory authority should be constituted.⁴¹

This body should be empowered to audit the ED's case selection process, monitor compliance with legal norms, receive complaints of abuse or coercion, and publish annual reports subject to parliamentary scrutiny. Such a system would bring much-needed transparency and restore public confidence in the ED's functioning. The procedural framework under which the ED operates must be reformed to ensure due process. Key changes should include making the Enforcement Case Information Report (ECIR) available to the accused just as FIRs are made available under the Code of Criminal Procedure (CrPC). Currently, the ED can initiate investigations, issue summons, and attach property without disclosing the allegations or the basis for its action. This lack of transparency violates the principles of natural justice. Moreover, arrests and seizures by the ED should be subject to judicial oversight. The wide powers granted under Sections 5, 17, and 50 of the PMLA, especially the admissibility of statements obtained without legal counsel, must be re-evaluated in light of constitutional protections under Articles 20(3) and 21.⁴²

The reversal of *Nikesh Tarachand Shah*⁴³ diluted the presumption of innocence and reinforced the controversial "twin conditions" for bail, which effectively make bail the exception rather than the rule by the case of *Vijaya madanlal*. This judicial position must be revisited to strike a fairer balance between enforcement interests and individual liberty. Another critical area of reform relates to internal integrity and anti-corruption safeguards within the ED. The recent ED Kochi Unit bribery

⁴¹ Law Commission of India, *Report No. 277: Reforms in Family Law* (2018)

<http://lawcommissionofindia.nic.in/reports/Report277.pdf> accessed 17 May 2025

⁴² B.B. Pande, 'Misuse of Preventive Detention Laws and the Rule of Law in India' (2020) 12(3) NLSIR 45

⁴³ *Ibid* (n 20)

scandal, in which the complainant, Aneesh Babu, a Kollam-based cashew exporter, reported an alleged ₹2 crore bribe demand made through intermediaries to the Vigilance and Anti-Corruption Bureau, has exposed systemic weaknesses in the agency's internal governance.

The VACB team then laid a trap and caught both officials red-handed accepting ₹7,000 at around 12 noon inside the zonal office, which has exposed systemic weaknesses in the agency's internal governance. To address this, the ED should implement periodic integrity audits conducted by an external judicial or independent ethics body.⁴⁴ A robust whistleblower protection mechanism must be fixed to allow ED officers and citizens to report internal misconduct without fear of retaliation. Additionally, sensitive postings should be rotational, especially in politically volatile regions, to prevent entrenched influence networks.

A statutory code of ethics, with clearly defined disciplinary consequences, would further enhance professional accountability within the organisation.⁴⁵ The case of T.V. Krishna Rao & Others⁴⁶ involved a bank fraud and money-laundering scheme in which forged deposit receipts of Northern Coalfields Limited were used, in collusion with a bank manager and other officials, to fraudulently withdraw funds. The proceeds were transferred through multiple accounts, largely withdrawn in cash, and utilised to settle both accounted and unaccounted liabilities, thereby projecting the illicit funds as legitimate.

During investigation, the Enforcement Directorate attached various assets of the accused under the PMLA. On an application filed by the victim bank, Central Bank of India, under Section 8(8) of the PMLA, the Special Court (PMLA), directed restitution of attached assets worth ₹1.02 crore to the bank.

Legislative reforms are equally critical. The PMLA, as it stands, contains vague and overbroad definitions of "proceeds of crime" and allows for prosecution even when

⁴⁴ The Wire Staff, 'ED as a Political Weapon: A Review of PMLA Convictions' (*The Wire*, 19 March 2025)

⁴⁵ Arvind Datar, *Datar Commentary on the Constitution of India*, vol 2 (LexisNexis 2021)

⁴⁶ T.V. Krishna Rao & Ors. v. Enforcement Directorate, Order dated 18.02.2025, Special Court (PMLA).

there is no evidence of concealment or projection of such proceeds as untainted property. Many of these ambiguities were inserted through Finance Acts passed as Money Bills thus avoiding debate and passage in the Rajya Sabha.

This bypassing of bicameral legislative scrutiny raises constitutional concerns, as previously flagged in *Roger Mathew v. South Indian Bank Ltd.* For preserving legislative integrity and protecting against retrospective criminalisation, substantial amendments to criminal law must have followed standard parliamentary procedure, not the shortcut of a Money Bill. The legislature should also introduce sunset clauses and statutory time limits on ED investigations, particularly where no trial or conviction has followed after prolonged attachment of property. Public transparency must become a cornerstone of ED's operations.

The agency should be required to release detailed annual reports, disclosing the number of cases initiated, closed, prosecuted, and successfully convicted. The case of *CSI Medical College & Others*⁴⁷ concerned an admission-related fraud in which the Director and associated persons dishonestly collected large sums from parents of six students on the false promise of securing MBBS admissions. These representations were made despite the accused being fully aware that such admissions were no longer permissible after the introduction of the centralized entrance examination regime.

Treating the amounts so collected as proceeds of crime, the Enforcement Directorate conducted an investigation under the PMLA and attached assets worth ₹95.25 lakh. On applications filed by the aggrieved parents under Section 8(8) of the Act, the Special Court (PMLA), directed restitution of ₹89.75 lakh to the victims, thereby affirming the statutory commitment to victim compensation and restoration under the PMLA framework. Such reports should also account for the total value of assets attached, confiscated, or returned, along with average timelines for each stage of

⁴⁷ *CSI Medical College & Others v. Enforcement Directorate*, Order dated 10.02.2025, Special Court (PMLA), Kerala.

investigation and prosecution.⁴⁸ Public access to this information would not only ensure accountability but also serve as a credible measure of the ED's actual enforcement success. The mismatch between thousands of investigations and a mere handful of convictions creates the perception that ED is more effective at exerting pressure than at securing justice.

In conclusion, the continued relevance of the Enforcement Directorate within India's framework for combating economic offences depends not merely on the statutory powers entrusted to it, but on the quality, restraint, and integrity with which those powers are exercised. An enforcement institution derives its authority as much from public confidence and judicial approval as from legislative mandate. Where investigative discretion is perceived to be unevenly applied or procedurally excessive, the credibility of the institution itself comes under strain. A persistent gap between the scale of enforcement action and sustainable judicial outcomes raises important questions about effectiveness, while repeated involvement in politically sensitive matters invites scrutiny regarding institutional neutrality.

These concerns are, taken together, risk weakening the normative foundations of enforcement rather than strengthening deterrence against financial crime. Meaningful reform must therefore move beyond cosmetic changes and address structural safeguards. Greater internal accountability, professional capacity-building, transparent decision-making, and insulation from external influence are essential to ensure that enforcement remains both robust and constitutionally compliant.

Equally important is a renewed commitment to procedural fairness, particularly in light of the severe consequences that investigation under economic offence statutes can entail for personal liberty and reputation. In the final analysis, the legitimacy of the Enforcement Directorate will be determined not by the visibility of its actions, but by their legal durability, proportionality, and consistency with constitutional principles. An institution that enforces the law with measured authority and

⁴⁸ Scroll Staff, 'States Cry Foul as ED Summons Officials Without Intimating Local Police' (*Scroll.in*, 5 February 2024)

principled restraint strengthens not only its own standing, but also the broader commitment of the legal system to justice, accountability, and the rule of law.

XIX. CONCLUSION

The transformation of the Enforcement Directorate from a modest foreign exchange regulatory body into one of India's most formidable financial crime agencies marks a defining shift in the country's anti-corruption architecture. While the imperatives of combating money laundering, cross-border economic offences, and fugitive economic offenders are undeniable, this study demonstrates that the contemporary enforcement framework under the Prevention of Money Laundering Act, 2002 has gradually drifted away from the constitutional values of fairness, proportionality, and institutional restraint.

The doctrinal and empirical analysis undertaken in this paper reveals a troubling asymmetry between the scale of enforcement action and the quality of judicial outcomes. Thousands of ECIRs, massive asset attachments, and frequent summonses contrast sharply with the limited number of adjudications and convictions. Such disparity, when coupled with opaque procedures like non-disclosure of the ECIR, reversal of the burden of proof, and the near-impenetrable twin conditions for bail, has converted investigation itself into a form of punishment. This erosion of procedural safeguards undermines the presumption of innocence and weakens the foundational guarantees under Articles 14 and 21 of the Constitution.

Equally significant is the institutional vulnerability exposed by allegations of selective targeting and internal corruption. The ED Kochi Unit bribery case, involving a serving Assistant Director, illustrates that the absence of internal accountability mechanisms does not merely raise questions of misuse. It threatens the moral legitimacy of the enforcement regime itself. When the agency entrusted with policing financial crime becomes susceptible to the same malpractices it is mandated to eradicate, the credibility of the entire anti-money laundering framework stands compromised.

From a federal perspective, the increasing assertion of central enforcement power at the expense of State autonomy has fostered a climate of centrally coercive federalism. The routine summoning of State officials, the expansion of PMLA jurisdiction into areas tangentially connected with predicate offences, and the bypassing of cooperative mechanisms destabilise the delicate constitutional balance envisaged under the Seventh Schedule. Such practices risk converting legitimate economic regulation into an instrument of executive dominance.

Comparative evaluation with jurisdictions such as the United Kingdom, the United States, and Singapore further underscores the deficit in India's enforcement design. Robust anti-corruption systems across democracies are characterised not merely by expansive investigative powers, but by independent oversight, judicial warrants, transparent reporting, and strong internal ethics regimes. India's ED, by contrast, operates with extraordinary coercive authority but without commensurate accountability.

The central conclusion of this study is therefore unambiguous. The effectiveness of the Enforcement Directorate cannot be measured by the volume of its raids or the quantum of assets attached. It must be assessed by the durability of its prosecutions, the integrity of its procedures, and its fidelity to constitutional principles. Meaningful reform requires structural insulation from executive control, mandatory disclosure of investigative foundations, recalibration of bail jurisprudence under the PMLA, and the creation of independent oversight and whistleblower protection mechanisms.

Only through such recalibration can the ED reclaim its role as a genuine guardian of India's economic integrity rather than a symbol of coercive governance. The future of India's fight against financial crime depends not on empowering enforcement without limits, but on embedding that power within the rule of law.

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