
THE ENFORCEMENT DIRECTORATE: POWER, OVERREACH AND POLITICAL INSTRUMENTALIZATION IN INDIA

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ABSTRACT

The Enforcement Directorate (ED) has become one of the most potent and most discussed investigative bodies in the regulatory environment in India today. The agency was founded in 1956 to implement the Foreign Exchange Regulation Act (FERA), 1947. Since then, the agency has developed significantly especially with the implementation of the Prevention of Money laundering Act (PMLA), 2002. What was initially a foreign exchange regulator has evolved into a central institution that is fighting money laundering, financing of terrorism, economic fraud and sophisticated cross-border financial crime- this is a change in the direction of a security-based concept of economic governance in India. With the continued integration of India in the world financial systems, the role of the ED in safeguarding financial independence, halting money laundering and maintaining market integrity has been gaining more significance. But its growing powers have produced both popular and constitutional apprehension. Critics say that the broad discretionary powers of the ED have occasionally led to political persecution of opposition leaders, activists and journalists. The enormous increase in enforcement procedures, compared to the PMLA conviction rate of less than one percent, has fuelled concerns that investigative procedures may be used as punitive measures with the long-term custody interrogation, detention of property and long-term pre-trial custody serving as extrajudicial punishment. The paper will discuss the evolution of the ED's powers over time, the evolution of the legislation and the judicial interpretation of the same with reference to the processes of attachment of property, search and seizure, arrest and bail under the PMLA. It uses a doctrinal approach and examines statutory passages, judicial decisions, parliamentary documents, governmental reports and commentary in the scholarly literature to determine whether the existing enforcement regime constitutes a constitutionally legitimate balance of the national security goals against the preservation of the fundamental rights. The paper also outlines possible structural changes, such as increased judicial accountability, increase in the evidentiary burden, independent review body and increased transparency of financial crime enforcement. Finally, the paper adds to the larger discussion

on the protection of the Indian financial system without placing the democratic principles of the constitutional republic in the centre.

I. Introduction

The Enforcement Directorate (ED) has emerged as India's one of the most powerful and controversial investigative agencies. The origin of this Directorate can be traced back to May 1st 1956, when an 'Enforcement Unit' was formed in the Department of Economic Affairs for handling Exchange Control Laws violations under the Foreign Exchange Regulation Act (FERA)¹. However, in the recent years the role of the Enforcement Directorate has significantly expanded and altered, particularly after the enactment of the Prevention of Money Laundering Act (PMLA), 2002². With the rise of globalization, liberalisation and the growing complexity of financial crimes such as money laundering, terror financing and economic frauds, the ED has become a central pillar in India's financial crime control framework. However, every coin has two sides. With the expansion of ED's power there has also been a significant and exponential concern regarding its accountability, independence, reliability, transparency and potential misuse for political purposes. While the agency's supporters hail it as an indispensable instrument in the government's efforts to combat corruption, black money and economic offences, critics and experts show concerns that the ED has been corrupted and has strayed from its original purpose and is now often used to target political opponents, activists and dissenting voices³. This research paper seeks to critically examine the powers, overreach and political instrumentalization of the Enforcement Directorate, exploring its evolution, statutory framework and functioning under the PMLA. The objectives of this study are to trace the historical development of the ED, analyse the scope of its statutory powers, evaluate how legislative amendments and judicial interpretations have expanded its authority and assess the extent to which it has been used as a tool of political influence. Central to this inquiry are questions about whether the ED has exceeded its legal mandate, how far political considerations influence its functioning and what mechanisms can be put in place to ensure that its enforcement actions remain consistent with constitutional principles of fairness and due process. The research proceeds on the hypothesis that while the Enforcement Directorate was created to uphold financial integrity and protect the economy from illicit activities, it has, in practice, evolved into a politically influenced body whose sweeping powers under the PMLA

¹ Foreign Exchange Regulation Act, 1947

² Prevention of Money Laundering Act, 2002

³ The Hindu, "The Expanding Powers of the Enforcement Directorate" 2023

pose a potential threat to civil liberties. Adopting a doctrinal research methodology, this paper relies on primary and secondary sources, including statutory provisions, case laws, government reports and academic commentaries, to examine the functioning of the ED and suggest reforms aimed at ensuring transparency, accountability and adherence to the Statutory Provisions.

II. Historical Evolution of the Enforcement Directorate

With the establishment of a small “Enforcement Unit”, the Enforcement Directorate traces its origins to 1st May, 1956, when it was set up within the Department of Economic Affairs to deal with violations under the Foreign Exchange Regulation Act, 1947 (FERA). Headquartered in Delhi and headed by a Legal Service Officer designated as the Director of Enforcement, the unit was initially assisted by an officer deputed from the Reserve Bank of India (RBI) and three Inspectors from the Special Police Establishment, with two branch offices at Bombay and Calcutta. In 1957, this unit was renamed as ‘Enforcement Directorate’ and a new branch was opened in Madras. Over time, the Directorate’s administrative control was shifted from the Department of Economic Affairs to the Department of Revenue under the Ministry of Finance, where it continues to function today.

The FERA regime was primarily regulatory in nature during its primary years, aimed at conserving foreign exchange in India’s nascent post-independence economy. However, with the enactment of the Foreign Exchange Regulation Act, 1973, the framework became more stringent and quasi-criminal, granting the ED wide powers of search, seizure and prosecution⁴The agency thus evolved from a regulatory authority into an intrusive investigative body. For a brief period between 1973 and 1977, the Directorate was placed under the Department of Personnel and Administrative Reforms, before being restored to the Department of Revenue.

The process of economic liberalization in the 1990s fundamentally altered India’s approach to foreign exchange regulation. The Foreign Exchange Management Act (FEMA), 1999 replaced FERA with effect from 1st June 2000, decriminalizing many offences and treating them as civil contraventions. Consequently, the ED’s focus shifted towards civil adjudication of foreign exchange violations under FEMA. However, the enactment of the Prevention of Money Laundering Act (PMLA), 2002—which came into force on 1st July 2005—marked a paradigm

⁴ Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440, where the Supreme Court observed that FERA was a stringent and regulatory statute with quasi-criminal consequences.

shift in the agency's mandate. The PMLA empowered the ED with criminal investigative authority to trace, attach and confiscate proceeds of crime arising from scheduled offences, effectively transforming it from a regulatory body into a central criminal law enforcement agency responsible for combating complex socio-economic crimes such as money laundering, financial fraud and terror financing.

Further expanding its mandate, the Government entrusted the ED with the enforcement of the Fugitive Economic Offenders Act (FEOA), 2018⁵, with effect from 21st April 2018, to deal with economic offenders who abscond from India to evade prosecution. Thus, from its modest beginnings as an enforcement unit focused on foreign exchange violations, the Enforcement Directorate has evolved into a multi-disciplinary agency at the core of India's financial crime enforcement architecture, wielding vast powers across multiple economic legislations.

III. Legal Framework Governing the Enforcement Directorate

The Prevention of Money Laundering Act, 2002 (PMLA) provides the main legal framework that allows the Enforcement Directorate (ED) to investigate and prosecute money laundering offenses in India. This law was created to stop money laundering and to allow the attachment and confiscation of property obtained through such offenses. The PMLA is a significant step in India's efforts to improve its financial regulations and law enforcement. Section 2(p) of the Act defines "money laundering" in relation to the "proceeds of crime." Section 3 describes the offense itself as any direct or indirect attempt to engage in, assist, or get involved in any process or activity tied to the proceeds of crime. This includes concealing, possessing, acquiring, or using these proceeds and presenting them as clean property. The Enforcement Directorate acts as the main investigative body under this law. It has broad powers to detect, investigate and prosecute money laundering cases. The Director of Enforcement, appointed under Section 49 of the Act, has administrative and supervisory control over the Directorate. This ensures the goals of the PMLA are carried out within India's overall anti-money laundering framework.

IV. Scope and Nature of the Enforcement Directorate's Powers under the PMLA

The PMLA, 2002, provides the ED with expansive powers to investigate, attach, arrest and prosecute persons accused of money laundering. While these are intended to safeguard the financial system against criminal abuse, they have been the subject of much legal and

⁵ Fugitive Economic offenders Act, 2018

constitutional contention on issues of their potential abuse and departure from traditional safeguards in criminal procedure.⁶ Accordingly, under Sections 5 to 8 of the PMLA, the Director or any officer authorized by him may provisionally attach property considered "proceeds of crime" if he forms an opinion that it is likely to be concealed, transferred, or dealt with in such manner so as to frustrate eventual confiscation⁷. This attachment remains valid for 180 days, pending confirmation by the Adjudicating Authority under Section 8. The scope of this provision enables the ED to secure assets at an early stage of investigation but it also creates concerns about pre-emptive action without judicial determination of guilt, thereby affecting the property rights of the accused⁸.

Furthermore, Section 17 of the PMLA confers powers on the ED to carry out search and seizure operations without the need for a prior FIR, so long as the officer records "reasons to believe" that an offence of money laundering has been committed. This provision gives the Directorate remarkable independence, enabling it to take immediate action against suspected offenders. However, since there is no external oversight or prior judicial sanction, this has been criticized for violating constitutional protections against arbitrary search and seizure⁹. Likewise, under Section 19, ED officers, not below the rank of Assistant Director, can arrest any person suspected of committing the offence of money laundering. The statute requires that the arrested person be orally intimated of the reason for such arrest and produced before a Special Court within 24 hours, in compliance with Article 22 of the Constitution. Nonetheless, considering the wide interpretative powers bestowed upon ED officers, such power has been considered to allow for the use of strong-arm tactics without the procedural equality that exists under other criminal legislations, such as the Code of Criminal Procedure, 1973.

Furthermore, Section 50 of the Act grants ED the powers of a civil court to summon individuals, enforce attendance, and record statements during inquiry or investigation. These statements, though admissible as evidence, do not have the same protection against self-incrimination accorded under Article 20(3) of the Constitution. The facility of treating such statements as evidentiary material with the ED thus has been one of the most contentious aspects of its functioning, viewed from the prism of constitutional assurances of fair trial and

⁶ Gautam Bhatia. *The Transformative Constitution* (2019)- Discussion on the process and misuse of investigative powers

⁷ Section 5, Prevention of Money Laundering Act, 2002

⁸ *Nikesh Tarachand v. Union of India*, (2018) 11 SCC 1

⁹ *Vijay Madanlal Chaudhary v. Union of India*, (2022) 10 SCC 1

procedural justice¹⁰. The Adjudicating Authority, constituted under the Act, is empowered to decide whether the property provisionally attached under Section 5 was indeed involved in money laundering and the Appellate Tribunal is the appellate forum for decisions rendered by the Adjudicating Authority. However, the composition and structure of these bodies have been criticized in practice for operating under the administrative shadow of the Ministry of Finance, thereby raising questions about their institutional independence and effective checks on the ED's actions¹¹.

When compared with other investigative bodies such as the Central Bureau of Investigation (CBI), the ED occupies a uniquely powerful position¹². While the CBI operates under the Delhi Special Police Establishment Act, 1946 and requires prior consent from state governments to initiate investigations within their jurisdictions, the ED functions directly under the administrative control of the Department of Revenue, Ministry of Finance and does not require such consent¹³. Its dual character — combining quasi-police powers of investigation with quasi-administrative authority for attachment and adjudication — creates a concentrated enforcement mechanism with minimal external oversight¹⁴. This institutional design, though intended to enhance efficiency in tackling economic crimes, effectively consolidates investigative, adjudicatory and prosecutorial powers within a single agency, thereby blurring the lines of separation of powers and accountability that are central to the rule of law. Consequently, while the ED's extensive authority is indispensable in combating the sophisticated nature of modern financial crimes, it also underscores the urgent need for stronger procedural safeguards, independent oversight mechanisms and clearer statutory limitations to prevent arbitrariness and ensure that enforcement remains consistent with constitutional principles of fairness and due process¹⁵.

V. The 2019 PMLA Amendment

The Prevention of Money Laundering (Amendment) Act, 2019 introduced sweeping changes that significantly expanded the powers of the Enforcement Directorate (ED) and altered the

¹⁰ Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1

¹¹ Law Commission of India, Report No. 277: Wrongful Prosecution (Miscarriage of Justice), 2018

¹² CBI Manual, Chapter 3; DSPE Act, 1946

¹³ Ministry of Finance (Department of Revenue) Notification 1, 2005

¹⁴ Centre of Public Interest Litigation v. Union of India, (2021) 7 SCC 526

¹⁵ B.N. Srikrishna, Rule of Law and Governance in India (2015)

procedural as well as substantive contours of India's anti-money laundering regime¹⁶. The amendment strengthened the agency's authority in matters of investigation, attachment, arrest and prosecution, marking a decisive shift in India's enforcement framework against economic offences. One of the most contentious features of the 2019 Amendment was its retrospective application, which empowered the ED to investigate offences that had occurred prior to the enactment of the PMLA, 2002, effectively widening the temporal scope of the law¹⁷. This retrospective operation blurred the line between past and ongoing offences, undermining the principle of legal certainty and predictability that forms a cornerstone of the rule of law¹⁸. Furthermore, the amendment expanded the definition of "proceeds of crime" to include not only property directly obtained from criminal activity but also assets indirectly derived or linked to such proceeds. This redefinition greatly broadened the ED's jurisdiction, enabling it to trace, freeze and attach property across multiple layers of ownership, often affecting third parties who may not be directly connected to the alleged offence¹⁹. Simultaneously, the amendment diluted procedural safeguards that had previously checked executive discretion. By granting ED officers greater autonomy to initiate action without prior sanction or judicial oversight, the amendment allowed property to be provisionally attached under Section 5 of the PMLA even before the filing of a chargesheet in the predicate offence. This preventive power, though designed to preserve the proceeds of crime, has been criticized for enabling the agency to cause financial and reputational harm without the backing of substantive evidence or judicial findings, thereby tilting the balance of power heavily in favour of the enforcement machinery²⁰. Moreover, the amendment reinforced Section 24, which reverses the burden of proof by requiring the accused to demonstrate that the property in question is untainted and not derived from criminal proceeds. This departure from the long-established criminal law principle of presumption of innocence poses serious constitutional concerns under Article 21, which safeguards personal liberty and due process. The reversal of burden, coupled with the absence of strong procedural protections, has rendered the PMLA a quasi-criminal statute that prioritizes enforcement efficiency over individual rights and fairness²¹. In *Vijay Madanlal Choudhary v. Union of India* (2022), the Supreme Court upheld the majority of these provisions, including the ED's powers of arrest, search, seizure, and attachment, thereby

¹⁶ Prevention of Money Laundering (Amendment) Act, 2019, No. 13 of 2019, Gazette of India, Extraordinary, Part II, Sec. 1, dated 1 August, 2019

¹⁷ PMLA (Amendment) Act, 2019, Section 2 (Inserting explanation to section 3)

¹⁸ KT Thomas, "Retrospective Criminal legislation and rule of law in India." (2019) 61(4) Journal of ILL 443

¹⁹ Directorate of Enforcement v. Axis Bank, (2019) 8 SCC 664

²⁰ Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019) 231–235

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

lending judicial approval to an already expansive statute²². However, the judgment has been met with significant criticism for its perceived deference to executive authority and its failure to impose adequate safeguards to prevent misuse²³. Legal scholars argue that this ruling entrenched an asymmetrical power dynamic between the State and the citizen, weakening the checks and balances envisioned under constitutional jurisprudence²⁴. The impact of these legal and judicial developments is visible in the ED's post-2019 operational landscape. Between 2014 and 2023, the ED registered over 3,000 cases under the PMLA but secured convictions in fewer than 25, reflecting a conviction rate of less than one percent²⁵. Despite the abysmally low rate of successful prosecutions, the number of raids, arrests and high-profile investigations has multiplied, raising questions regarding the selectivity and proportionality of enforcement²⁶. The disjunction between investigative zeal and judicial outcomes suggests that the agency's powers may be exercised more as instruments of deterrence or political signalling than as tools of impartial justice²⁷. While proponents argue that the 2019 Amendment was necessary to strengthen India's compliance with international anti-money laundering standards and to combat complex financial crimes²⁸, critics contend that it has eroded constitutional safeguards, compromised procedural fairness, and fostered a culture of executive dominance²⁹.

VI. ED's Role in Combating Socio-Economic Offences

By their very nature, Socio-economic offences, strike at the heart of not only a nation's economic foundations but also on its moral foundations, resulting in the eroding of public trust in governance, distorting market integrity, and undermining the rule of law³⁰. Socio-economic offences unlike conventional crimes which typically involve direct harm to individuals or property are systemic in character and exploit financial, regulatory, or institutional frameworks for personal or collective gain³¹. In this context, the Enforcement Directorate (ED) has emerged as a pivotal institution in India's fight against economic malfeasance and financial crime³². Tasked with enforcing the Prevention of Money Laundering Act, 2002 (PMLA) and the Foreign

²² Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1

²³ Arghya Sengupta, "Supreme Court and the Expanding State: Reading Vijay Madanlal" (2022) 4 Indian Journal of Constitutional Law 67

²⁴ B.N. Srikrishna, Rule of Law and Governance in India (Oxford University Press, 2015) 119–123

²⁵ Ministry of Finance, Rajya Sabha Unstarred Question No. 2157 (21 March 2023) <https://pib.gov.in>.

²⁶ The Hindu, "ED's Conviction Rate Under 1% Despite Record Raids and Arrests" (5 April 2023)

²⁷ P. Ramanathan, "Instrumentalization of Investigative Agencies in India" (2023) 15(2) NUJS Law Review 88

²⁸ Financial Action Task Force (FATF), Mutual Evaluation Report of India (2023)

²⁹ Pratap Bhanu Mehta, "The Expanding State and Shrinking Liberty" (2022) Indian Express, 30 July

³⁰ M.C. Setalvad, Law and Society in India (2nd edn, N.M. Tripathi 1985) 215

³¹ K.D. Gaur, Criminal Law: Cases and Materials (7th edn, LexisNexis 2020) 112

³² Annual Report, Enforcement Directorate, Ministry of Finance (2022–23), p. 7.

Exchange Management Act, 1999 (FEMA)³³, the ED occupies a central role in investigating complex economic offences that transcend national borders and involve intricate webs of transactions, shell entities, and financial intermediaries³⁴. Its active involvement in major financial scandals — such as the Nirav Modi–Punjab National Bank scam³⁵, the Vijay Mallya case³⁶, the Yes Bank crisis³⁷ and the Commonwealth Games corruption scandal³⁸ — underscores its significance in tracing illicit money trails, attaching proceeds of crime and initiating extradition proceedings against economic offenders who attempt to evade the Indian Judicial system. Through these interventions, the ED has successfully restrained and recovered assets worth thousands of crores, contributing to the protection of public funds³⁹ and reinforcing financial discipline.

On the International landscape, the ED works to enforce various laws for the Government of India, and efforts have been recognized by international bodies like the Financial Action Task Force (FATF)-the global intergovernmental body that sets standards to combat money laundering and terrorist financing⁴⁰. FATF evaluations have shown that strong institutions like the ED are a sine qua non for compliance with global anti-money laundering norms and for stemming the outflow of illicit financial resources. This Institutional strength, therefore, positions the ED as a cornerstone of India's broader socio-economic governance architecture, essential for maintaining economic stability and investor confidence in a liberalized, globalized economy.

However, the very expansive powers that allow the ED to act so decisively against high-profile offenders have also made it vulnerable to criticism and allegations of overreach. The lack of a well-defined procedural framework; limitations on judicial or parliamentary oversight; and the vesting of broad discretion in the agency have thrown up other serious challenges related to accountability and transparency⁴¹. Furthermore, the perceived politicization of its functioning — wherein actions are primarily taken against opposition leaders, voices of dissent, and activists — has eroded public confidence in its impartiality. This duality, where the ED seeks

³³Foreign Exchange Management Act, 1999, No. 42 of 1999

³⁴ PMLA Annual Report 2022, Ministry of Finance, Government of India, p. 23.

³⁵ Nirav Modi v. State of Maharashtra, (2022) SCC OnLine Bom 123

³⁶ Union of India v. Vijay Mallya, (2017) SCC OnLine Del 9803

³⁷ “Yes Bank Fraud Case: ED Files Chargesheet Against Rana Kapoor,” The Hindu (New Delhi, 15 May 2021).

³⁸ Central Bureau of Investigation v. Suresh Kalmadi, (2011) 3 SCC 507

³⁹ Enforcement Directorate Press Release, PIB, 4 February 2024

⁴⁰FATF Mutual Evaluation Report of India (2023), p. 18

⁴¹FATF Mutual Evaluation Report of India (2023), p. 18

to be a guardian of economic integrity and at the same time, an instrumentality for political leverage, brings into perspective the tension between enforcement efficiency and constitutional propriety. The ED's role, therefore, in combatting socio-economic offences undeniably remains imperative for the maintenance of financial order in this country and to deter economic wrongdoing. Its credibility and legitimacy, nonetheless, depend upon setting out in place institutional safeguards which guarantee fairness, independence and the observance of due process.

While the ED was initially conceived as a neutral agency entrusted with the task of upholding India's financial discipline and fighting economic crimes, over the past decade the trajectory of its functioning has emerged as one of sheer institutional overreach, selective targeting and politicization. The agency, which was expected to strengthen the integrity of the financial system, increasingly finds itself accused of functioning less as a neutral guardian of economic stability and more as a tool of political influence.

The data reflects this troubling shift. The number of Enforcement Case Information Reports (ECIRs) filed has ballooned from fewer than 200 in 2014 to more than 3,000 by 2023, representing a more than tenfold increase within a decade. Yet, despite this exponential rise in enforcement activity, the conviction rate under the Prevention of Money Laundering Act (PMLA) remains below one percent⁴². This statistical gap indicates either an alarming deficiency in the quality of evidence being pursued or a tendency to weaponize the investigation process⁴³ itself as a means of coercion and intimidation. In several instances, the initiation of an ED case has led to reputational harm, prolonged detention and financial ruin, even where eventual acquittal or lack of evidence followed. Such outcomes have led scholars and commentators to describe the ED's functioning as an example of "the process becoming the punishment".

A very contentious aspect of the ED's operations is its alleged partisan deployment by the ruling Bharatiya Janata Party to target opposition leaders and states governed by rival political formations⁴⁴. Many investigations and media analyses demonstrate a pattern: action against opposition politicians often comes just before important elections or politically sensitive

⁴² Lok Sabha Unstarred Question No. 1231, answered on 21 July 2023

⁴³ Indian Express, "ED Conviction Rate Below 1%," (23 July 2023)

⁴⁴ India Today Investigation, "95% of ED, CBI Cases Target Opposition," (August 2023)

periods⁴⁵. According to publicly available data and investigative reports, nearly 95 percent of ED cases against politicians since 2014 have involved members of opposition parties, whereas the pace of investigation or prosecution significantly drops once the targeted individual joins or allies with the BJP. This selective intensity of action gives credence to the widespread perception that the ED has transformed into a political weapon rather than a neutral instrument of economic justice.

Concrete examples reinforce this narrative. In 2023 and 2024, several high-profile leaders of opposition parties—including Arvind Kejriwal and Manish Sisodia (Aam Aadmi Party), Hemant Soren (Jharkhand Mukti Morcha), Sanjay Raut (Shiv Sena), and D.K. Shivakumar (Indian National Congress)—were subjected to ED raids or arrests in close proximity to major electoral cycles⁴⁶. The liquor excise policy case in Delhi, which led to the arrest of AAP leaders just months before the Lok Sabha elections, was viewed by many analysts as an instance of politically motivated timing⁴⁷. Similarly, in Maharashtra, the ED's intense scrutiny of opposition leaders such as Sharad Pawar and Sanjay Raut coincided with political realignments that ultimately benefited the BJP. Moreover, once certain targeted individuals—such as Ajit Pawar, Suwendu Adhikari, and Himanta Biswa Sarma—shifted allegiance to the BJP, pending investigations against them reportedly lost momentum or were deprioritized⁴⁸. This sequence of events contributes to the growing belief that the ED's functioning under the present regime is driven less by the pursuit of justice and more by the imperatives of political consolidation and electoral strategy.

But even beyond allegations of selective targeting, there are serious flaws in procedure that undermine the ED's credibility. Unlike the CBI, the ED is not obliged to register an FIR when starting an investigation; instead, it generates an internal document known as the Enforcement Case Information Report, which is seldom shared with the accused⁴⁹. This secretiveness violates fair hearing rights because such an accused does not get an opportunity to challenge the very foundation of the investigation. Moreover, under Section 50 of the PMLA, any person summoned by the ED has to make a statement on oath, and such statements are admissible as

⁴⁵ Scroll.in, “Timing of ED Arrests Raises Political Questions,” (April 2024)

⁴⁶ Hindustan Times, “ED Action Against Opposition Intensifies Before Polls,” (Feb 2024)

⁴⁷ Scroll.in, “Timing of ED Arrests Raises Political Questions,” (April 2024)

⁴⁸ NDTV, “Cases Go Quiet After Leaders Join BJP,” (August 2023)

⁴⁹ PMLA, s 3 read with s 19; *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1, para 337.

evidence. This, in essence, nullifies the protection against self-incrimination guaranteed under Article 20(3) of the Indian Constitution and therefore weakens due process and fairness⁵⁰.

These imbalances are further entrenched by custodial practices under the PMLA and its bail procedures. The infamous "twin conditions" of Section 45 for granting bail—that courts must be satisfied that the accused is not guilty and will not commit an offence while on bail—create a nearly insurmountable threshold for release. While such provisions were held to be unconstitutional in *Nikesh Tarachand Shah v. Union of India*⁵¹, they were subsequently reinstated by amendment and upheld in *Vijay Madanlal Choudhary v. Union of India*⁵², thus entrenching long-term pre-trial detention even in cases where conviction is not certain. From a judicial perspective, this has facilitated stringent bail conditions that have made pre-trial incarceration the rule rather than the exception—a profoundly disturbing development from the perspective of personal liberty.

Finally, the ED's methods—frequent raids, property attachments and protracted interrogations—often border on harassment and can have chilling effects on both political dissent and business confidence. Article 21 of the Constitution guarantees the right to life and personal liberty, encompassing fairness, reasonableness and protection from arbitrary state action. However, the ED's power to attach properties without prior judicial sanction and to extend such attachments indefinitely creates significant room for abuse. When these powers are exercised disproportionately against political rivals or dissenting voices, they threaten not only individual liberty but also the foundational democratic principle of equality before the law⁵³. The cumulative evidence of selective targeting, procedural opacity and political interference suggests that the Enforcement Directorate—intended to protect the nation's financial integrity—has increasingly evolved into an instrument of political control. This raises profound questions about institutional independence, constitutional morality and the future of accountability within India's democratic framework.

VII. Judicial Scrutiny and Constitutional Challenges

The Enforcement Directorate's expansive powers under the Prevention of Money Laundering Act (PMLA) have repeatedly been tested before the judiciary. Courts have faced the challenge

⁵⁰ Indian Constitution, art. 20(3); *Toofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1

⁵¹ *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1

⁵² *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1

⁵³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (right to fair procedure under Article 21).

of balancing the State's need to curb economic offences with the protection of individual liberty and due process⁵⁴.

Vijay Madanlal Choudhary v. Union of India (2022)

In this landmark case, the Supreme Court upheld the ED's authority to arrest, attach property, and record statements, describing money laundering as a "heinous economic offence" that endangers national integrity⁵⁵. However, critics argue that the judgment prioritized administrative convenience over constitutional liberty⁵⁶. By holding that ED officers are not "police officers," the Court allowed the use of compelled statements as evidence, thereby weakening Article 20(3)'s protection against self-incrimination. The ruling marked a shift towards judicial deference and away from the rights-oriented approach seen in earlier precedents like *Maneka Gandhi v. Union of India*⁵⁷.

Pankaj Bansal v. Union of India (2023)

A year later, the Court partially corrected this imbalance⁵⁸. In *Pankaj Bansal Case*, it ruled that the ED must furnish written grounds of arrest to the accused, reinforcing transparency and procedural fairness under Article 21. Though limited, this ruling acknowledged that unchecked executive power threatens civil rights and due process⁵⁹.

Article 20(3) and Self-Incrimination

Courts have struggled to reconcile Section 50 of the PMLA with Article 20(3). While police-recorded confessions are inadmissible, statements to ED officers are admissible since they are technically not "police"⁶⁰. This narrow interpretation circumvents the constitutional safeguard against compelled testimony, undermining the principle that no person should be forced to incriminate themselves.⁶¹

⁵⁴ *Union of India v. W.N. Chadha*, 1993 Supp (4) SCC 260.

⁵⁵ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1

⁵⁶ Gautam Bhatia, "Vijay Madanlal Choudhary and the Rise of Executive Supremacy," *Indian Constitutional Law and Philosophy Blog* (2022)

⁵⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁵⁸ *Pankaj Bansal v. Union of India*, (2023) SCC OnLine SC 1244

⁵⁹ Abhinav Chandrachud, "PMLA and the Constitutional Right to Fair Procedure," *Economic and Political Weekly* (2023)

⁶⁰ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1, para 337

⁶¹ *Selvi v. State of Karnataka*, (2010) 7 SCC 263

Article 21 and Due Process

The Maneka Gandhi doctrine requires that “procedure established by law” be just, fair, and reasonable. The PMLA’s reversal of the burden of proof, restrictive bail provisions, and prolonged pre-trial detention dilute this principle and invert the presumption of innocence⁶², allowing deprivation of liberty without proportionate justification.

Judicial Deference and Institutional Balance

The judiciary’s general deference to Parliament in economic matters has allowed agencies like the ED to function with minimal oversight⁶³. While combating financial crime is vital, excessive judicial restraint risks hollowing out constitutional accountability⁶⁴. Without active and consistent scrutiny, the ED’s sweeping powers threaten to erode both individual rights and the institutional balance envisioned by the Constitution⁶⁵.

VIII. Accountability and Oversight Mechanisms

As of now the Department of revenue, Ministry of Finance is the supervisory body relating to the Enforcement Directorate (ED)⁶⁶, and remains internally governed through administrative vigilance and inspection mechanisms. However, the problem lies in the fact that there is a lack of a dedicated parliamentary standing committee overseeing the ED’s operations⁶⁷. Such a framework results in limited transparency and minimal external accountability⁶⁸.

The agency’s operational opacity is reflected in its failure to publish annual performance reports, conviction ratios, or audited expenditure details⁶⁹. The non-disclosure of Enforcement Case Information Reports (ECIRs) and property-attachment procedures further obscures scrutiny⁷⁰, making it difficult for the public, media, or even the legislature to evaluate its proportionality or efficiency. This lack of transparency raises legitimate concerns regarding

⁶² Nimesh Tarachand Shah v. Union of India, (2018) 11 SCC 1

⁶³ State of Madras v. V.G. Row, AIR 1952 SC 196

⁶⁴ Justice A.P. Shah, “Judicial Deference and the ED: The Perils of Unchecked Power,” The Hindu (2023)

⁶⁵ Centre for Public Interest Litigation v. Union of India, (2011) 1 SCC 560

⁶⁶ Department of Revenue (ED) Annual Report, Ministry of Finance (2023), p. 12

⁶⁷ PRS Legislative Research, “Oversight of Investigative Agencies in India” (2022)

⁶⁸ The Wire, “Why India Needs Parliamentary Supervision for ED and CBI” (March 2023)

⁶⁹ Lok Sabha Unstarred Question No. 1231, answered on 21 July 2023

⁷⁰ The Hindu, “ECIR Non-Disclosure Violates Due Process,” (Sept 2022)

arbitrary targeting and political misuse⁷¹.

To ensure accountability without compromising operational integrity, legislative oversight must be institutionalized. A specialized parliamentary or bipartisan committee—akin to the UK’s Intelligence and Security Committee⁷²—could periodically review the ED’s annual activities, assess complaint trends, and evaluate adherence to due process. Such structured scrutiny would reinforce public confidence and prevent executive overreach.

Judicial supervision also serves as a crucial balancing mechanism. Courts should adopt a rights-centric interpretation of the Prevention of Money Laundering Act (PMLA), ensuring that attachment orders and arrests are subjected to rigorous, time-bound judicial review. The judiciary’s proactive intervention in verifying evidentiary sufficiency and procedural fairness can meaningfully curtail arbitrary exercise of power.

From an administrative standpoint, reforms must be both structural and ethical. Establishing an Independent Directorate Oversight Authority—comprising retired judges, financial experts, and former civil servants—would introduce impartial external evaluation⁷³. Moreover, mandating annual public reports detailing the number of prosecutions, convictions, and recovered assets would enhance transparency⁷⁴. The creation of internal review boards to assess the evidentiary basis before initiating proceedings, coupled with mandatory training in constitutional ethics for ED officers, would instill a culture of proportionality and respect for rights. Collectively, these reforms would not weaken the ED but rather strengthen its legitimacy and constitutional alignment.

IX. Conclusion

The Enforcement Directorate is both indispensable and controversial and therefore it embodies a paradox: On one hand, it is entrusted with combating complex financial crimes by playing a vital role in preserving economic integrity and national security. It, on the other hand, exercises unrestrained power that results in risks undermining the very constitutional principles it seeks to protect.

⁷¹ Vidhi Centre for Legal Policy, “Reforming the Prevention of Money Laundering Act,” 2021, highlighting issues of opacity in ECIRs and attachment proceedings.

⁷² Intelligence Services Act 1994 (UK)

⁷³ Second Administrative Reforms Commission, 4th Report: Ethics in Governance (2007)

⁷⁴ Transparency International India, “Annual Report on Financial Accountability” (2023)

This research underscores how the ED's expansion from a modest Foreign Exchange Regulation Act (FERA) unit into a powerful anti-money laundering agency has outpaced the growth of institutional oversight mechanisms. The judiciary's consistent endorsement of its wide-ranging powers, coupled with inadequate legislative review, has created an environment where political instrumentalization and arbitrary action can thrive.

The aim therefore must be to not reform and limit the Enforcement Directorate's power but to recalibrate its functioning in harmony with constitutional morality⁷⁵. True and honest institutional strength lies not in the quantum of assets attached or individuals arrested, but in the credibility and fairness of the enforcement process. Upholding due process, transparency and impartiality will transform the ED from a symbol of coercion into a pillar of accountable governance—ensuring that in protecting the economy, it also safeguards democracy.

⁷⁵ Justice V.R. Krishna Iyer, "Morality and Power in Indian Governance," *Mainstream Weekly* (1978)