

## **FEMA Vs FERA**

### **Why in news?**

*Enforcement Directorate (ED) has recently registered a case against the British Broadcasting Corporation (BBC) India under the Foreign Exchange Management Act (FEMA).*

### **What is the case about?**

- The ED registered a case against BBC, under FEMA, for the alleged violation is the Foreign Direct Investment (FDI).
- Earlier, the Income-Tax Department had also carried out surveys in the offices of BBC in New Delhi and Mumbai on non-compliance with transfer pricing rules and vast diversion of profits.
- To know more about transfer pricing [Click Here](#).

### **What are Foreign Exchanges?**

- Different countries have different currencies and a foreign exchange converts the currency of one country into another.
- For example, if India is importing from the US, it needs to pay in dollars, similarly when the US is importing from India it would need to pay in rupees.
- Foreign exchange is also important when a country is investing in another.
- If the US is investing in India, it has to invest in rupees similarly, India has to invest in dollars while investing in US.
- Such transactions create a demand for foreign exchange.

### **What is the FEMA Act, 1999?**

- Foreign Exchange Management Act (FEMA) came in 1999 as a successor to the Foreign Exchange Regulation Act (FERA) of 1973.
- It was drafted while keeping in mind the changing economic conditions in a post-liberalisation India.
- The aim of the act was to facilitate external growth, encourage foreign exchanges, maintenance of foreign exchange market in India.

### **What are the similarities between the FERA and FEMA?**

- The Reserve Bank of India and Central Government continued to be the regulatory bodies.
- Presumption of extra territorial jurisdiction as conceived in FERA was retained.
- The Directorate of Enforcement continued to be the agency for enforcement of the provisions of the law such as conducting search and seizure.

## What are the differences between FERA and FEMA?

Provisions	FERA	FEMA
<b>Origin</b>	1973	1999
<b>Aim</b>	To regulate foreign exchange in order to conserve foreign exchange reserves.	To facilitate external trade & payments and promoting orderly development and maintenance of foreign exchange market.
<b>Background</b>	Formulated at a time when the foreign reserves were limited	Enacted at a time when the foreign reserves were satisfactory
<b>Provisions</b>	Complex: consisted of 81 sections	Simple: consist of 49 sections
<b>Right of Assistance</b>	It did not contain any provision on the defaulter to seek any legal assistance	It expressly recognizes the right of appellant to take assistance of legal practitioner
<b>Category of violation</b>	Criminal offence	Civil offence
<b>Punishment</b>	Imprisonment	Monetary penalty
<b>Search &amp; Seizure</b>	It conferred wide powers to make a search	The scope and power of search and seizure has been curtailed and confined to officers of Enforcement
<b>Transactions</b>	All foreign exchange dealings required permission from RBI or Central government	Current account transactions are free from permissions and certain Capital Account transactions required special permission from RBI

### Quick facts

Enforcement Directorate
<ul style="list-style-type: none"> <li>• It is a premier financial investigation agency of the Government of India.</li> <li>• The Directorate of Enforcement is a multi-disciplinary organization mandated with investigation of offence of money laundering and violations of foreign exchange laws which includes               <ul style="list-style-type: none"> <li>- The Prevention of Money Laundering Act, 2002 (PMLA)</li> <li>- The Foreign Exchange Management Act, 1999 (FEMA)</li> <li>- The Fugitive Economic Offenders Act, 2018 (FEOA)</li> <li>- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA).</li> </ul> </li> </ul>

### References

1. [The Indian Express | BBC Issues](#)
2. [India Code | About FEMA](#)
3. [Enforcement Directorate | About ED](#)

4. [Shri Ram College of Commerce | Foreign Exchange Management](#)

