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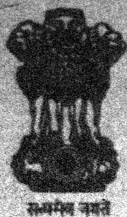
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**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
DIRECTORATE OF
ENFORCEMENT**

**ESTIMATES COMMITTEE
1991-92**

SIXTH REPORT

TENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

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ESTIMATES COMMITTEE
(1991-92)

(TENTH LOK SABHA)

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
DIRECTORATE OF ENFORCEMENT



Presented to Lok Sabha on 6 March, 1992

LOK SABHA SECRETARIAT
NEW DELHI

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CORRIGENDA

Corrigenda to the Sixth Report of
Estimates Committee
(1991-92)

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**COMPOSITION OF THE COMMITTEE
(1991-92)**

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30. Shri Braja Kishore Tripathy

SECRETARIAT

- | | | |
|---------------------|-------------------------------|-------|
| 1. Shri G.L. Batra | — <i>Additional Secretary</i> | _____ |
| 2. Shri K.K. Sharma | — <i>Joint Secretary</i> | _____ |
| 3. Shri B.B. Pandit | — <i>Director</i> | _____ |
| 4. Shri K.L. Narang | — <i>Under Secretary</i> | _____ |

*Shri Vijay N. Patil has resigned from the membership of the Committee on Estimates w.e.f. 11th December, 1991.

INTRODUCTION

1. Chairman of Estimates Committee having been authorised to submit the Report, on their behalf, present this 6th Report on the Ministry of Finance (Department of Revenue) — Directorate of Enforcement.

2. The Committee undertook an examination of the Directorate owing to the widely perceived power of this Organisation over the citizen and the latter's apprehensions of its misuse for extraneous purposes.

3. The Committee considered the replies given by the Department of Revenue to a detailed questionnaire issued on the subject whereafter the oral evidence of the representatives of the Department of Revenue and Directorate of Enforcement was recorded on 19.9.1990. The Committee wish to express their thanks to the officers of the Ministry and Enforcement Directorate for placing before them the written notes concerning the subject under examination and such other information as was desired by the Committee in connection with the examination of the subject. They are also grateful to them for showing high degree of candour during the evidence before the Committee in sharing with the Members of the Committee their views and perceptions of different matters of relevance.

4. The Report was considered and adopted by the Committee on 28.1.1992.

5. The main thrust of the Report is on following aspects — objectivity and independence in the functioning of the Directorate — Strengthening of intelligence set up for effective targetting of searches — safeguarding the citizen against arbitrariness or harassment in exercise of powers under FERA — adjudication process.

6. In their Report the Committee have come to the conclusion that the policy of shifting the Directorate from one Ministry/Department to another can only undermine the efficiency of this organisation. The Committee, therefore, are in favour of the administrative control of the Directorate being placed with the Department of Economic Affairs which also deals with the administration of FERA. However, the Committee are also conscious of the need for close coordination with the various other departments which have a bearing upon the working of the Directorate.

7. In regard to the question of making the functioning of the Director of Enforcement more independent, the Committee have come to the conclusion that it may not be practicable to have a fixed tenure for Director of Enforcement. They have, however, desired that the Government must

adopt ways and means for encouraging the officers holding the post of Director of Enforcement to act with utmost independence and impartiality. They also desire that at the same time suitable steps should be taken, expeditiously, by the Ministry to ensure that the powers vested in various officers of Directorate are not misused and that cases of misuse are dealt with expeditiously and sternly.

8. The Committee consider it necessary to have a periodic evaluation of the Directorate, say, after every 5 years as an in-built mechanism within the FERA itself. The Committee expect that such an evaluation will have the force of law.

9. In order to facilitate greater and smooth flow of information from third parties in situations where neither of the two parties involved in violation of FERA cooperate with the Directorate, the Committee have advised the Government to expeditiously amend Section 33(2) of the Act. At the same time Committee would also expect that the targets of searches, seizures and arrests are picked up with greatest care and only after substantial intelligence is obtained against such target. The Committee also desire that the Government should continue such economic reforms as would make flow of foreign exchange into India a profitable proposition.

10. The Committee are mindful of the importance of proper intelligence for the effective functioning of the Directorate. However in order to bring forth greater objectivity in the functioning of the Directorate and to minimise the possibility of Enforcement Officers frittering away their energy in following up cases which are either not genuine or where poor intelligence forecloses chances of success, the Committee have stressed upon the need to have an arrangement whereby the intelligence is received, sifted, evaluated and assessed by officers who are not directly concerned with the operative part of enforcement activity. The Committee, have also desired that the Government will take expeditious and effective steps to revamp the intelligence set up in the Directorate of Enforcement and, to appoint, a special officer of sufficient seniority to exclusively look after the intelligence work.

11. In this context, the Committee are also in favour of bringing such matters like collection and processing of economic intelligence within the purview of a strengthened intelligence apparatus within the Directorate of Enforcement.

12. While expressing satisfaction at improving searches-seizure ratio the Committee would expect the Government to take adequate steps to further improve this ratio. For this they have desired that not only the intelligence be strengthened but also sufficient staff and police protection be provided to search parties.

13. The Committee have in their Report underlined the significance of fixing targets for searches at a realistic level and close monitoring of such searches by senior officers in order to bring to light malpractice, if any.

14. Persuaded by their concern for the ordinary citizen the Committee have gone as far as in recommending to Government to amend the law in such a manner as would give the citizens adequate legal protection against harassment.

15. In order to make the process of adjudication of cases faster, the Committee have recommended a number of measures which include:— Fixation of reasonable time-limit for adjudication process and for registration of cases; setting up of special courts for economic offences; giving freedom to the Department to engage lawyers of known competence to defend cases involving large sums of money without being obliged to confine their choice to a panel lawyers of Central Government; strengthening of legal set up within the Directorate of Enforcement and creation of attractive promotion prospects on the legal side in order to draw and retain officers of sound legal knowledge and experience.

16. The Committee have also desired the Government to pay serious attention to the organisational aspects of Enforcement Directorate and equip the Directorate with adequate staff which could commensurate with its current work-load. At the same time suitable measures to strengthen the existing vigilance set up for appropriate action against the corrupt officials, have also been recommended by the Committee.

17. The Report is largely based on the work put in by the previous Committee, the composition of which is given in the Annexure I. The Committee wish to place on record sincere thanks to the Chairman and Members of earlier Committee.

18. For facility of reference the recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix of the Report.

NEW DELHI;
14th February, 1992
25 Magha, 1913 (S)

MANORANJAN BHAKTA,
Chairman,
Estimates Committee.

CHAPTER I

INTRODUCTORY

1.1 The Directorate of Enforcement is an attached office of Ministry of Finance (Department of Revenue) responsible for enforcement of the provisions of Foreign Exchange Regulations Act, 1973.

1.2 In a written note submitted to the Committee the Department of Revenue stated:—

“The Directorate was set up under Foreign Exchange Regulations Act, 1947 and is enforcing FERA 1973 which came in force w.e.f. 1.1.1974. The relevant provisions of FERA 1947 are as follows:

‘Director of Enforcement’ means the Director of Enforcement of Foreign Exchange Regulation appointed by the Central Government for the purpose of enforcing the provisions of this Act.”

1.3 The relevant provisions (Section 3 of the FERA 1973) which is in force at present states that “there shall be the following classes of officers of Enforcement namely:—

- (a) Directors of Enforcement;
- (b) Additional Directors of Enforcement;
- (c) Deputy Directors of Enforcement;
- (d) Assistant Directors of Enforcement; and
- (e) Such other class of officers of Enforcement as may be appointed for the purposes of this Act.”

A. Historical Background

1.4 There was no separate agency for the enforcement of FERA and investigation of offence thereunder from 1947 upto 1956. At that stage this responsibility was being discharged by a section in Exchange Control Department of Reserve Bank of India designated as “Investigation and Enforcement Section”. The searches and seizures, whenever necessary, were undertaken with the help of the then Special Police Establishment (now a constituent of Central Bureau of Investigation), further action including filing of cases in the courts used to be taken by the Reserve Bank of India; the prosecution being conducted by the Special Police Establishment.

1.5 The above arrangements being unsatisfactory and the system of collective intelligence in regard to FERA related offences being non-existent, as also the reservations of the Reserve Bank of India as to the compatibility of this responsibility with their role as country's Central Bankers, a separate organisation for the purpose of enforcing FERA came

into being with the establishment of a small Unit at Delhi w.e.f. 1st May, 1956 under the administrative control of Department of Economic Affairs of the Ministry of Finance; it was called Enforcement Unit. The head of the Organisation, an officer of the legal service, was appointed as Director of Enforcement. Simultaneously, two branch offices of the units were also set up in Calcutta and Bombay. A third branch office was opened at Madras in June, 1957. Officers drawn from Reserve Bank as well as Special Police Establishment at various levels were also drafted into the organisation. As upto 20th September, 1957, the FERA itself was a temporary legislation, the Enforcement Unit was also purely a temporary organisation. With the amendment of FERA *vide* FERA Amendment Act, 1957, the enforcement machinery was placed on a permanent footing and was for the first time legally recognised.

B. Administrative Control

1.6 After the machinery for enforcement of FERA gained a legal footing in 1957 it continued to function under the Department of Economic Affairs in the Ministry of Finance. In December, 1960 however, the Director of Enforcement and his staff were brought under the administrative control of Department of Revenue in the same Ministry.

1.7 In a written note the Department stated that this shift was occasioned by the need for achieving better coordination between the Directorate and the Department of Revenue as by this time a good number of officers of the Excise and Customs Department had been drafted into the Directorate for investigating a large number of foreign exchange offences linked with smuggling, over-invoicing and under-invoicing which necessitated coordination with Central Board for Excise and Customs as well as Department of Revenue.

1.8 For a short time from 1974 to 1977, however the Directorate was placed under the Administrative control of Cabinet Secretariat, Department of Personnel. This *Status quo ante* was restored in 1977. Explaining these changes the Department in a written note stated:

“It may be mentioned that along with the Enforcement Directorate, the Directorate of Revenue Intelligence had also been shifted from the Department of Revenue to the Department of Personnel. This change was during the period of emergency. Subsequently after the lifting of the emergency both the Directorates were shifted back to the Department of Revenue”.

1.9 Again in 1987 the Directorate was partially transferred to the Department of Economic Affairs, as matters relating to administration, accounts and establishment continued to be looked after by the Department of Revenue itself. Even for technical matters the change was effected only at and above the level of Deputy Secretary and the same lower staff in the Department of Revenue continued to handle such

technical matters. In a written submission to the Committee the Department of Revenue explained:

“This arrangement was perhaps made as incumbent who was appointed as the Director of Enforcement was also *ex-officio* Joint Secretary in the Department of Economic Affairs. After the incumbent had been transferred the Directorate was transferred back to Department of Revenue. The Directorate is again under the administrative control of Department of Revenue since January, 1990.”

1.10 When asked to indicate the most appropriate place for the Directorate of Enforcement, the Ministry stated that the Directorate had remained with the Department of Revenue most of the time and whenever there had been a change it had to be reverted after a short spell. The obvious reason seems to be the need to achieve coordination with Customs and Income-tax Department. For the reasons the Ministry felt that the continuance of the Directorate with the Department of Revenue is desirable.

1.11 In this context, the Secretary of the Ministry of Finance, Department of Revenue stated during evidence:—

“First of all, the question is whether the best arrangement for the administration of Directorate of Enforcement is its linkage with the Department of Revenue. There are advantages and disadvantages in both the alternatives. The administration of FERA in general, laying down the policy, and amendment in the law are within the purview of Department of Economic Affairs. Liaison with RBI which is also very closely involved is also the responsibility of the Economic Affairs Department. Therefore, legitimately there seems to be an advantage in having the Directorate of Enforcement also with the Department of Economic Affairs. There are, of course, certain serious disadvantages also. The Department of Economic Affairs which is involved with macro economic policy in general is not very much attuned to this kind of investigative and enforcement work and supervision of enforcement agencies and the Finance Secretary being involved in practically all policy making in the Government has hardly any time. The Second aspect is that a FERA violation generally also involves violation of other economic laws. If some money is not repatriated, that means that there is violation of income tax laws. There are various other ways of FERA violation, like over-invoicing, under-invoicing, junk export etc. which are within the purview of the Customs. Therefore, in many cases except the ordinary hawala transactions, infringement of customs laws are also involved. Finally, the same operators are involved in cases of FERA and Customs laws. They may even be involved in drug trafficking. There has to be coordination of intelligence and action among the enforcement agencies. As the Revenue Department is responsible for

other enforcement agencies, there is a distinct advantage in the Directorate of Enforcement also being with the Revenue Department so that it can effect better coordination."

C. Independence of Directorate

1.12 The Committee enquired whether the existing arrangement was the healthiest one and what could be done to ensure the impartiality and independent functioning of the Directorate.

1.13 In this connection the Secretary during evidence stated:—

"This problem is not only relevant to the Directorate of Enforcement but it is common to practically the entire administration, where-ever economic laws and more sensitive matters are involved. I think, it depends on the political ethos, the standards of morality and so many other things."

1.14 The Secretary further stated:—

"There have been all kinds of attempts made to prevent abuse. There have been all kinds of attempts made to have a vigilance machinery in order to prevent corruption. But the only solution that has worked in practice is to give such sensitive assignments to officers of competence and proven integrity."

1.15 When asked if the Director of Enforcement should have a fixed tenure of five years in order to help him functioning independently, the Secretary Revenue commented as follows:

"Suppose the Director of Enforcement, for some reason, does not enjoy my confidence or ceases to enjoy the confidence of the Minister, then what kind of effective role he can play? He will become *persona non grata*. Therefore, the five year tenure, although attractive in principle, cannot be implemented in practice."

1.16 With regard to independence and impartiality of this Directorate the Secretary during evidence stated:—

"I do not think, the answer lies in having an independent organisation. I will give you the reasons. Firstly, the Ministry of Finance must be fully accountable for the actions of the Directorate of Enforcement as all other enforcement agencies, to Parliament and to the people. So, if you make it as an independent organisation, then the problem comes regarding accountability."

D. Role and Functions

Role

1.17 In a written note the Department has stated that the Directorate is concerned mainly with the enforcement of the provisions of Foreign Exchange Regulation Act. In addition the Directorate also recommends cases for detention under the Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act, 1974. It also assists the State authorities in locating and detaining the persons against whom detention orders have been issued.

1.18 During evidence, the Secretary, Department of Revenue was asked as to how the Department of Enforcement could perform a positive as well as negative role *vis.* encouraging the flow of foreign exchange into the country and prevention of unauthorised dealing in foreign exchange which are apparently different, and whether Department had at all succeeded in living upto this role. In reply, the Secretary stated as follows:—

“The Directorate of Enforcement is supposed to catch violations of law and transactions and to deal with them in a certain manner like imposition of penalty and prosecution etc. These are supposed to be deterrent punishments; there are also provisions available which may be called draconian under the Preventive Detention or COFEPOSA..... These methods are used primarily to detect cases of violation, to punish the wrong doers, to make an example of them and provide deterrent punishment to other violators so that they hesitate in violating the law. It will be impossible for any law enforcement agency to quantify to what extent their efforts in enforcement of law has resulted in better compliance of law. It is possible that deterrent punishment is insufficient and it is also possible that because of the presence of Directorate of Enforcement the law is not violated.”

1.19 The main functions of the Directorate as stated to be are as under:—

- (a) to collect, sift, collate, interpret, disseminate intelligence relating to violation of the Foreign Exchange Regulation Act and while working out the same, depending upon the circumstances of the cases:
 - (i) to conduct searches of suspected persons, conveyances and premises for seizing incriminating materials (including Indian and foreign currencies involved) and/or
 - (ii) to enquire into and investigate suspected violations of the Foreign Exchange Regulation Act and for that purpose, arrest, of persons, if necessary.
- (b) To adjudicate cases of violations of Foreign Exchange Regulation Act for levying penalties departmentally and also for confiscating the amounts involved in contravention;
- (c) To prosecute offenders in Courts;
- (d) To defend cases before the Foreign Exchange Regulation Appellate Board and Courts.
- (e) To realise the penalties imposed in Department adjudications.

E. Review of the Functioning of Directorate of Enforcement

1.20 Asked to state whether any review or evaluation of the functioning of the Enforcement Directorate had ever been done by any independent agency the Department in its reply has stated that no such review or evaluation of the functioning of the Directorate has so far been made by any such independent body.

1.21 In this connection, the Secretary of the Ministry of Finance, Department of Revenue during evidence stated:—

“Any investigating agency exercising such wide powers over the citizens of the country and handling such sensitive areas of the economy should be subjected to constant review or periodical review in any case. The question arises, what kind of review it should be and who should undertake that review. A suggestion was mooted, I think, in the Questionnaire that was sent to us, that the Directorate of Enforcement should be subjected to evaluation by some independent outside authority. Now, I am not aware of any instance where any investigating agency has been subjected to review by an outside independent organisation.”

1.22 The Secretary added:—

“As far as FERA is concerned, if you go through Section 44, it is clearly laid down that the Directorate of Enforcement and the Enforcement Officer cannot reveal specific information to any body except when it is demanded by somebody authorised under law. They are prohibited from giving that information to anybody. Unless somebody is privy to that information, it is very difficult to judge whether a particular action, a search, adjudication or arrest was justified on the grounds that were available or the evidence that was available with the Directorate of Enforcement. Since that information cannot be divulged to any outside agency, it is not possible. But it is necessary that the operations of this Directorate should be reviewed and the responsibility, I think, for conducting such a review periodically and overseeing their operation is cast on the Secretary, Revenue at the moment, implying that he must periodically look into the working of this organisation and give them proper direction on how they should operate and if there are any instance which come to his notice either through VIP reference or petitions etc., which seem to indicate that there is something which leaves to be desired in the functioning of the organisation then he must take corrective steps or suggest corrective steps.”

1.23 The Committee note that the Directorate of Enforcement has been created under the Foreign Exchange Regulation Act (FERA) which, upto 1957 was being looked upon as only a transitory legal document for exchange control purposes. However, in that year both FERA as well as

Directorate of Enforcement assumed a permanent footing. The FERA was revamped in 1973. At the same time the Directorate has also grown organisationally as also in terms of its responsibilities.

1.24 The Committee find that right from its inception in 1947 and thereafter the Directorate has been working under the administrative control of different departments/agencies of the Government. To begin with it functioned as part of Exchange Control Department in Reserve Bank of India. Thereafter it has been placed either under the Department of Economic Affairs or under Department of Revenue at different stages and for different spells. During the period (1975-77) when emergency was enforced the Directorate was placed under Cabinet Secretariat Department of Personnel. At present the Directorate depends for its manpower requirement largely on the Department of Revenue. Moreover Department has to maintain an active interaction with this Department as most of the violations of FERA have cross-linkages with matters falling under one or the other organisation under Department of Revenue. On the other hand the administration of FERA, which involves determination of policy questions and amendments in the law, falls under the Department of Economic Affairs.

The Committee are of the view that this policy of shifting the Directorate from one Ministry/Department to another and back is not desirable or conducive to efficiency. They are not inclined to agree with the contention that the Directorate should be placed under one or the other Department merely on the basis of the scale of its interaction with them. The Committee were informed that the balance of advantage seems to lie in retaining the Directorate under the administrative control of the Department of Revenue.

The Committee do not agree with the existing arrangement. They are of the view that for the smooth functioning of the Directorate it is desirable that the administrative control of the Directorate should be with the Department of Economic Affairs which also dealt with the administration of FERA so that the deficiencies and amendments in FERA which come to the notice of the Directorate can be removed expeditiously. At the same time the Committee feel that there should be close coordination with other Departments which have a bearing upon the functioning of the Directorate. The Committee will like to be informed of the steps taken in this regard.

1.25 The Committee are distressed to find that there have been cases of misuse of powers by the officers of the Directorate of Enforcement. They were, however, informed that efforts have been made to prevent such abuse of powers. The Committee also take note of the suggestions made by the Secretary, Revenue during evidence that such sensitive assignments should be given to officers of competence and proven integrity.

The Committee hope that suitable steps will be taken, expeditiously, by the Ministry to ensure that the powers vested in various officers of Directorate are not misused and cases of misuse dealt with expeditiously and

sternly. They will also like to be informed about the steps taken in this regard.

1.26 The Committee have also examined the question of according greater independence to the Directorate of Enforcement in its functioning so as to make it more impartial and free from undue interference. In this context they realise the importance of having persons of high integrity and unimpeachable moral standards to head the organisation. They also appreciate the sensitivity of assignment and the desirability of having an incumbent who enjoys the confidence of political authority holding forte.

While it may not be practicable to have a fixed tenure for Director of Enforcement, the Committee desire that the Government must give a serious consideration to the matter and adopt ways and means for encouraging the officers holding the post to act with utmost independence and impartiality.

1.27 The Committee are surprised to note that so far no review or evaluation of the functioning of the Directorate has been made by any agency, internally or externally.

1.28 In this regard the Committee are inclined to agree with the views expressed by Secretary, Revenue that unless the evaluators are privy to the information relating to the circumstances of specific cases it will be very difficult to judge whether a particular action, such as adjudication or arrest was justified. The Committee also note that under the provisions of the FERA, the officers of the Directorate cannot reveal such information to any body except when demanded by someone authorised under law. In absence of any such information the rationale of the evaluation itself would stand defeated. The Committee, however, do not accept the view that the only person, capable of reviewing and evaluating the functioning of Directorate would be the Secretary, Revenue. The Committee are also of the firm opinion that such an evaluation is not synonymous with day-to-day direction and supervision of the work of the Directorate which is part of the moral responsibilities of Secretary, Revenue.

The Committee, therefore, suggest that the Government may consider the desirability of providing for periodic evaluation of the Directorate, say, after every 5 years, in the FERA itself. Such an evaluation will then have the force of law and all the necessary but sensitive information can be revealed to a panel of evaluators who can be drawn from amongst the retired and serving officers of the Government possessing actual experience of having worked in various economic intelligence/enforcement agencies.

CHAPTER II

FOREIGN EXCHANGE REGULATION ACT

A. *Evolution*

2.1 The system of exchange control was set up in India after the outbreak of war in September, 1939 for the purpose of conserving and directing to the best uses the limited supplies of foreign exchange. The control was made effective through a series of rules under the Defence of India Act, 1939. These rules lapsed on 30.9.46 but were kept in force for further period of six months under the Emergency Provisions (continuance) Ordinance, 1946. In view of the disruption of internal economy of so many nations, the shortage of foreign exchange continued. It was, therefore, necessary that the system of exchange control should continue and therefore the enactment called Foreign Exchange Regulation Act, 1947 (VII of 1947) was brought in force w.e.f. 25.3.1947.

2.2 The Foreign Exchange Regulation Act, 1947 was originally conceived as a temporary measure. It was, however, placed on the Statute Book permanently by Act 39 of 1957 which came into force from 30.9.1957.

2.3 Side by side with the creation of the separate organisation viz. Directorate of Enforcement, it was also contemplated that the offence under the Act should ordinarily be dealt with departmentally and only in very serious cases should these be taken to Court. This idea arose out of the fact that prosecutions in the Courts were long drawn out and laborious and it was necessary to deal with offenders under the FERA expeditiously. The FER Act was, therefore, amended so to give the Director of Enforcement powers to adjudicate cases of offenders under the Act. The amendments however, provided that for offences of very grave nature, the Director of Enforcement may decide to prosecute the offenders instead of adjudicating and imposing penalty himself. Those amendments were carried out by Act 39 of 1957.

2.4 The powers given to the officers of the Directorate for investigation of foreign exchange cases proved to be inadequate and cumbersome. Therefore, a major amendment was effected vide Act 55 of 1964 and came into force from 1.4.65. The important amendments related to powers of search, seizure and recording of statements on summons etc. Under these amendments it was no longer necessary to obtain Search Warrants from Magistrates. Officers of Enforcement were also empowered to search persons, public places and vessels on appropriate informations and seize foreign currency and documents. Intention in the matter of non-repatriation of export proceeds and others dues from abroad

was no longer required to be proved. The new provisions enabled the Directorate to conduct investigations with greater expedition and efficiency. The amendments incorporated in the Defence of India Rules regarding acquisition and possession of foreign exchange were also put on a regular footing by incorporating these provisions in the FER Act itself.

2.5 The new provisions also enabled delegation of powers of adjudication to officers below the rank of Director so that cases involving lesser amounts could be adjudicated at lower levels thus contributing to disposal of adjudication with the utmost dispatch.

FER Act 1973

2.6 The Government of India appointed a Study team in 1970 to study the question of leakage of foreign exchange through invoice manipulation. This report was received in June, 1971. The 47th Report of the Law Commission "on the trial and punishment of Social and Economic Offences" was also received in April, 1972. The advisability of restricting multinationals operating in the country for earning huge profits even on trading and professional activities were engaging the attention of the Government and a proper machinery to regulate their activities was felt necessary. In the light of these Reports and studies and the further experience gained by the Directorate of Enforcement and RBI during the preceding decade it was decided to repeal the old FERA and enact a new and comprehensive law on foreign exchange. A Bill was brought before the Parliament on 18th August, 1972 and was passed as Act LVI of 1973. This new Act came into force from 1.1.74.

2.7 Under this new Act the most important change was that for offences under the Act separate prosecution was also provided for in addition to departmental adjudication. New provisions were incorporated for regulating the activities of foreign companies, and in respect of foreign travel and booking of passages. Penalties in departmental proceedings were enhanced from three times to five times the amount involved. The provisions relating to realisation of export proceeds were thoroughly revised to make them more effective and realistic.

2.8 In a subsequent note furnished to the Committee the Department has stated that the Foreign Exchange Regulation Act, 1973, is administered through specific or general orders issued by the Government of India as well as the RBI from time to time. The desired changes in the Exchange Control Regulations are made through the Executive orders within the existing framework of the Act. The existing provision of FERA 1973 are flexible enough to accommodate the requisite changes in the existing policy.

B. Objectives of FERA

2.9 As enunciated in the Preamble of FERA, 1973 the objectives of FER Act, is to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country.

2.10 With regard to modifications/amendments in the FERA, 1973, the Department has stated that the provisions in FERA, 1973 can be broadly classified into two categories as under:-

- (i) Substantive i.e., regulatory provisions;
- (ii) enforcement provisions i.e., provisions relating to procedure, evidence etc.

2.11 The first type of provisions in the Act have been so worded that the degree of restriction etc. can be relaxed or strengthened by means of executive orders/notifications issued thereunder, either generally or for any particular foreign currencies/commodities or class(es) of any specified foreign currencies, commodities or even persons, in accordance with the policy of the Government, or the needs of trade or finance, or international agreements.

2.12 As regards the second category of provisions with which mainly the Enforcement Directorate is concerned, an amendment to Sec. 33(2) of the Act has been suggested by the Enforcement Directorate to enable it to legally require person to give an authority to obtain information from a third party, which otherwise, the third party is not likely to furnish on one pretext or the other. The matter is being examined by the Government.

2.13 The Department in a written note also stated that by and large the present provisions of the Act are considered quite adequate.

2.14 The Department has further stated that there were suggestions to amend the Foreign Exchange Regulation Act, 1973 to remove unnecessary procedural complications and to make it more reasonable and to plug the loopholes for evasion. The suggestions have been examined. However, at present, it is not considered necessary to amend FERA.

C. Violation of FERA

2.15 The Committee desired to know if the tendency amongst the people to keep foreign exchange outside the country has diminished to any extent through the efforts of Directorate of Enforcement. In reply, the Secretary, Department of Revenue during evidence stated:

“It is difficult to make any estimate in this regard. However till such time the basic distortions that exists in our economy are not

resolved and unless effective steps are taken it is difficult to achieve any significant success in curbing this tendency."

2.16 The Secretary further stated:—

"It is our submission that the tendency to keep foreign exchange outside the country can be curbed only when the incentive for doing so is removed. The Hon. Members have raised the question of smuggling. During 1988-89 smuggled items worth Rs. 500 crores have been seized. Apart from this a large number of small seizures are occurred. But the question is in such time there is considerable difference between the price of gold ruling abroad and that ruling in the country. Its smuggling cannot be stopped altogether even though we may succeed for seizing some portion of it. A long term solution can come only if some basic changes are made in this regard."

2.17 The Committee then asked the Secretary Department of Revenue to spell out the basic distortions which account for FERA Violation on wide scale.

2.18 In a written note submitted to the Committee after evidence the Department enumerated the following factors which have appeared and are responsible for violation of FERA.

2.19 All the regulations enshrined in FERA arise from the non-convertibility of the rupee. The reasons which justify the restrictive foreign exchange regulations are also the chief cause prompting the violations of these regulations. These reasons are the scarcity of foreign exchange arising out of imbalances in trade and the consequent need to impose severe restrictions on imports both by way of physical restrictions and tariff barriers. This automatically leads to the development of an economy which is protected and largely insulated from international economic trends. As a result of this policy, many of the domestic goods do not compare either in quality or in cost with their counterparts in other parts of the world. Scarcity of quality goods in the domestic market is partly met by the people coming to India from abroad and partly through smuggling.

2.20 One of the major demands for illegal foreign exchange arises from purposes of financing smuggling which is again a direct consequence of the wide differential in prices of commodity in India and outside and the unsatisfied demand for various consumer articles including gold and silver bullion. The Department stated that while every effort is made to check smuggling and to take deterrent action against those responsible for the same, the economic incentives in certain cases are so great that even with the very stringent laws in operation, it is not entirely unprofitable to engage in this clandestine activity. The weakness of the currency is another factor responsible for people trying to keep their money abroad because, even if the interest rates outside may not be better than those available in India, the depreciation of the rupee itself appreciates sufficiently the value of the foreign assets held outside to give the FERA violator a distinct

economic advantage. Further, the comparatively high rates of taxation also encourage keeping funds abroad.

2.21 The high Customs duties on most items encourage under-invoicing of imports and therefore, to meet a part of the foreign exchange cost outside India, there is a tendency to keep funds abroad for this purpose. In order to generate these funds, there is an equal incentive to under invoice exports which are then used for meeting part of the cost to over invoice imports.

2.22 The Department stated that while every effort is made to check these violations and to bring the offenders to book, a very significant improvement in the situation can be brought about only when the macro economic imbalances referred to above are corrected. Some of them may be unavoidable because of our peculiar nature of the economy, but some others may be capable of gradual rectification if the appropriate policies for correcting the same are pursued on a sustained basis.

2.23 The Committee find that the Foreign Exchange Regulation Act, 1973 has its genesis in shortage of foreign exchange faced by many countries including India after the Second World War. Although conceived as a transitory regulation it has now acquired a permanent place on the 'Statute Book' owing to continued balance of payment problems faced by the country. The Committee also note that the developmental compulsions of Indian economy have turned the availability of foreign exchange into a very critical factor of growth. The Committee are therefore not surprised to know that successive Governments have been strengthening FERA with the result that the powers now vested with Enforcement Officers have become more comprehensive. Moreover a great deal of subjectivity has been introduced in the exercise of such powers leading to a number of complaints of harassment through alleged vexatious searches, seizures and arrests. This obviously is not conducive to the creation of a business environment which could facilitate greater investments and speedy growth. The Committee feel disconcerted by the fact that inspite of widening the scope of powers exercised by Enforcement Officers under the FERA and despite making the Act more flexible to create room for policy manoeuvring, the general perception is that of widespread violations of FERA leading to substantial sums of foreign exchange being kept outside the country. In this context, the Committee welcome the candour of Secretary, Revenue in admitting that existence of FERA notwithstanding, situation would remain unmitigated so long as distortions in our economy persist. The Committee are also informed that FERA would cease to be relevant in a situation where rupee could be a convertible currency. This, the Committee believe is only partially feasible in the immediate future. They, however, cannot overlook the fact that the existence of FERA in its present regour can also

impede the progress of economy towards the convertibility of rupee. Appreciating the above dilemma the Committee desire that while it may be prudent to retain FERA in the near future during the period of transition it ought to be modified in such a manner as will deter foreign exchange racketeers from resorting to malpractices.

The Committee advise the Government to expeditiously amend Section 33(2) of the Act to facilitate greater and smooth flow of information from third party in situations where neither of the two parties involved in violation of FERA cooperate with the Directorate. At the same time the Committee would expect that the targets of searches, seizures and arrests are picked up with greatest care and only after substantial intelligence is obtained against such target. The Committee also recommend that the Government should continue such economic reforms as would make flow of foreign exchange into India a profitable proposition.

CHAPTER III

FUNCTIONING OF ENFORCEMENT MACHINERY

A. Collection of Intelligence

3.1 The Committee have been informed that the Directorate receives/collects intelligence from a number of sources. The information so available is disseminated/collated and while working out the same, depending upon the circumstances of each case, the officers of the Directorate may conduct searches of the suspected persons, conveyance or premises for the purpose of seizing incriminating material. Thereafter further open enquiries are made. In other cases which do not warrant searches, open enquiries are initiated straightway. Further, depending upon facts and circumstances of the case, the officers of the Enforcement have powers to place the suspected person under arrest.

3.2 Asked about the methods used for collecting, developing and then disseminating intelligence, the Ministry has stated that "Strictly speaking on account of paucity of staff this Directorate has no separate set up for collecting, developing and disseminating the intelligence; which is a must for organisation like the Enforcement Directorate. However, with the available staff and the skeleton intelligence set up of the Directorate has following sources of information:-

- i) Casual informers
- ii) Recruited informers
- iii) From sources abroad
- iv) Sister organisations
- v) Information received by post, etc.

3.3 The intelligence so collected or received is verified discreetly by the officers by shadowing the person concerned, maintaining round the clock surveillance, etc.

3.4 The information and the result of discreet enquiries is then considered by a senior officer, who very carefully and meticulously assesses the *modus operandi* of the person concerned and the possibility of recovery of incriminating material from his possession/premises. It is on the basis of this assessment, that a decision is taken whether it would be necessary to conduct searches or some other mode of enquiry should be adopted.

3.5 Enquired by the Committee what could be the methods adopted to make intelligence gathering impartial and effective the Secretary during evidence stated:

“As far as intelligence set up in the Directorate of Enforcement is concerned, there is absolutely no hesitation in accepting that today, it is definitely inadequate and has to be improved. The suggestion which was made by the Yardi Committee that there should be a special Director exclusively for looking after the intelligence, I think, there is a lot of force in it and should be considered by the Government. There are some inherent limitations in collecting intelligence as far as Directorate of Enforcement is concerned which I would like to place before you. Except for small *hawala* transactions here, most of the intelligence is not available in India. It is available abroad for transactions which have taken place outside the country. As things stand today, most of the intelligence that we get is from disgruntled employees, partners, relatives etc. Who have fallen out. The competitors themselves are the source of intelligence.

In fact our own effort in gathering intelligence apart from the information which comes is very small as compared to the intelligence we get from these sources. Therefore, the main thing is that some of these informations can be prejudiced and coloured. The main task before the Directorate of Enforcement therefore is to evaluate whether this information is correct, is reliable and it requires further action or not and so on. We are trying to devise various measures through contacts and so on and we are very candid in saying that the response we get from foreign parties and particularly foreign banks is almost negative. But we are trying to involve our foreign missions. We are trying to get information from foreign parties also, indirectly hinting that if the transaction has taken place and if you do not inform, then we will perhaps give this information to your revenue authorities because you might not have disclosed it in your income tax returns etc.”

3.6 The Secretary elaborated further:

“Intelligence gathering in this field is a little more tricky and complex than intelligence gathering in other areas. Therefore, I do not think the collection of intelligence and its evaluation and assessment can altogether be separated at the operational level. Because at the operational level, he has to judge whether it is reliable, information is dependable, whether it is corroborated by other evidence etc. However I concede the point that there must be a focus for gathering intelligence, on devising the methods on keeping contact with the kind of agencies that I suggested for collection of intelligence, evaluating it and also passing it to the field formation from time to time. So a special officer or a cell headed

by an officer in the Directorate who looks after exclusively the collection of intelligence perhaps is very much necessary."

3.7 Asked as to whether there was any separate officer dealing with intelligence, the Secretary of the Ministry stated that there was no separate officer but an official was dealing with it among other things.

3.8 In reply to a question regarding to new methods for collection of intelligence gathering/collecting of evidence, the Department has stated that the Enforcement Directorate is in the process of evolving new methods of collecting intelligence in the specified fields. At this stage the methods which are under consideration are:-

- (a) Coordination with the Customs Department and studying the trends in some selected trades and/or of some selected commodities at different places within the country with a view to detecting invoice manipulations in imports & exports.
- (b) Efforts to seek increased coordination with Income Tax Department with regard to the commissions, etc. due to persons in India from persons outside India.
- (c) Scrutiny of contracts for supplies by foreign suppliers to Government Departments with regard to commission due/paid to agents in India.
- (d) Matching and monitoring of export documents through RBI to ensure (i) that proceeds of exports are promptly realised, (ii) that the defaulters are proceeded against promptly and more sternly.
- (e) Publicity in papers etc. inviting informations from public.
- (f) Systematic study of imports under O.G.L and/or Duty free imports of capital goods, etc. for detecting over-invoicing etc.
- (g) Studying *modus operandi* of the Front companies.

3.9 With regard to the methods of collecting evidence, it may be stated that most of the transactions relating to foreign exchange dealings would have a party outside India. Hitherto the emphasis had been to resort to search actions so as to recover documents evidencing the nature of the deals with the foreign parties. However, this approach has not yielded the desired results in terms of clinching evidence as such evidence is frequently available abroad and not easily obtainable.

3.10 In this regard the Directorate proposes:—

- (a) To approach the parties outside and/or the Governmental authorities there for collection of such evidence.
- (b) Addressing letters to Governmental authorities outside India telling them about the suspected clandestine deals and the offences etc. committed against their laws.
- (c) In the case of non-repatriation of export proceeds, addressing letters to foreign buyers (In some case where such letters were

addressed the Directorate has been successful in obtaining evidence against the Indian exporters).

- (d) In the case of compensatory payments, if the persons remitting the funds from outside are Non-Resident Indians, to summon them to India to face the enquiry.

3.11 With regard to coordination with other agencies, the Department has stated that the Directorate of Revenue Intelligence is principally a store-house of intelligence relating, mainly, to the Customs. The foreign exchange transaction has a very close link with the violation of the Customs Act, particularly in relation to merchantile imports & exports as also the imports under baggage rules. This is also relevant in the case of invoice-manipulation in the international trade. By coordinating its activities with the Directorate of Revenue Intelligence, the Enforcement Directorate is able to proceed against the violator under FERA.

3.12 The Enforcement Directorate also maintains coordination with Department of Income-Tax particularly in the matter of commission earned by person—in India—from persons outside India.

3.13 It may be mentioned that as per the instructions of the Ministry of Finance, Coordination Committees have been set up in different stations, which are known as Zonal Coordination Committees. These committees meet periodically for the purpose of exchanging information between themselves.

Central Economic Intelligence Bureau

3.14 Dwelling on the larger aspects of intelligence the Committee also examined the question of economic intelligence. The Ministry in a separate note has stated that the Central Economic Intelligence Bureau was set up for coordinating and strengthening the intelligence gathering activities, the investigative efforts and enforcement action by various agencies concerned with investigation into economic offences and enforcement of economic laws. The Bureau was to be responsible for maintaining liaison with the concerned Departments and Directorate both at the Central and State Government level and in addition was to be responsible for the overall direction and control of the investigative agencies within the Department of Revenue itself. Since economic offences detected by one Enforcement Agency have invariably close link with offences under various fiscal laws, the Government had on 17th August, 1990 constituted an Economic Intelligence Council to facilitate greater coordination among the enforcement agencies dealing with economic offences.

3.15 The Committee desired to know what had been done to make Bureau of Economic Intelligence more effective. In this context, the Secretary of the Ministry during evidence stated:

“You will be happy to learn what you have in mind about more active role of Central Economic Intelligence Bureau that already it has been

functioning for the last few months. We have not only upgraded the status of the post to the Special Secretary but we have given it very precise functions of coordinating, gathering and evaluation of intelligence, studying *modus operandi* of various economic offences. Advising the Government from time to time about loopholes in the system which are being abused by these violators and so on. He will not only act as a brain trust but also as a catalyst and the active coordinator of all enforcement agencies. This is the kind of role that we have given to him and his status has also been upgraded. Apart from that, we have constituted a permanent Economic Intelligence Council of Bureau as its head which has its members from Income Tax, Enforcement, Narcotics, Customs, Excise and also from CBI. We have also stated that wherever necessary, they can also request the persons of some other intelligence agencies so that if there is any information or if their services can be utilised for gathering any information about any major economic offence, that can also be done. So, by means of this, the economic offenders can be brought to book in a more effective manner."

3.16 In a subsequent note furnished by the Department to the Committee on suggestions to improve the system of (collector) collection collation and interpretation of economic intelligence, the Ministry has stated that the Directorate of Enforcement has been mainly relying on information from casual informers.

3.17 Commenting upon the usefulness of intelligence provided by such sources the Department stated that this kind of information can be very useful but in order to encourage more such informers two actions are necessary: Firstly if the people get the feeling that definite action will be taken on such informations, more and more informers will come forward. Secondly, though a large number of people know the general provisions of FERA, many people do not know the exact violation and if the department starts a campaign to educate the public about the kind of information that the department is looking for it may result in better and more information about FERA violation.

3.18 The Department stated further that under the present provisions an informer who is also a partner in the offence can be given amnesty for helping the investigation and that this provision has not been properly used so far. The Department intends to use the provisions of amnesty more frequently to bring the violators to book.

3.19 Going through the information with other Government Agencies to book the FERA violators is another method of collecting information. The following new areas of intelligence collection have been started by the Department of Enforcement:

- (1) Probe into under-invoicing of exports.

- (2) Probe into bogus imports—we should examine all cases of O.G.L imports where there is no duty payable.
- (3) Probe into all Indian Companies/Joint ventures abroad, which show losses, or nominal profits.
- (4) Probe into all FERA Companies in India which show losses or nominal profits.
- (5) Collection of information about racketeers abroad from Indian residing abroad.
- (6) Guarantee amount to be incorporated in contracts for purchase of imported equipment, for providing information to the Enforcement agencies in India.
- (7) Authority letter to be obtained from suspected bank account holders.

3.20 The Department has also stated that the issue which is of importance in the matter for collection, collation and interpretation of economic intelligence is the other agencies which are intimately connected with the use of foreign exchange—Under-invoicing of export is a matter which has to be primarily looked into by the Customs Department. But the Customs Department considers itself as revenue earning department and therefore, does not apply its energies on finding out under-invoicing of exports which is mainly a FERA contravention. The Department cannot imagine the Customs Department giving due importance to this work even though the Government may emphasise the seriousness of this activity. The Directorate of Enforcement therefore, will have to use its own resources for finding out such violations.

3.21 Similar is the case with fictitious imports of duty free items. Where there is no duty the Customs Department does not probe into the possibility of over-invoicing or the transaction being totally fictitious. The Directorate of Enforcement will have to examine such cases and come out with information which may lead to prosecution.

3.22 Though the RBI is the custodian of foreign exchange the experience has been very disappointing in the matter of monitoring export proceeds by the RBI. The Department stated that they were getting information on cases of exports which took place three or four years back but the repatriation had not taken place and the party has not applied for extension of time from the RBI. There is urgent need for strengthening the reporting system in the RBI.

3.23 The Department has come across cases of imports of capital goods machinery for actual users where there is no duty or nominal duty which are over-invoiced. Though this matter falls in the realm of the Customs Department it has to be monitored by the Directorate of Enforcement.

3.24 The Department further informed the Committee that there were a number of cases where export commitment was being taken from importers of raw materials and the parties are said to have not fulfilled the commitments and sold the raw materials in the market which means smuggling of those items to the country where foreign exchange has been spent through official channels. In this connection Department has stressed the point that the Chief Controller, Imports & Exports will have to tighten the procedures to avoid such misuse.

3.25 The Commerce Ministry and the Industries Ministry also sanction joint ventures abroad. The Committee were informed by the Department that there are cases where the joint ventures abroad show losses by manipulating account while actually they siphon off the foreign exchange. Here also the Directorate of Enforcement with its expertise on detecting such cases will have to go through the papers periodically submitted to the Commerce Ministry and the RBI.

3.26 The Committee have been informed that intelligence is collected by the Directorate of Enforcement from casual and regular informers, sister organisations and foreign sources. They are surprised to note that the Directorate has no structured and separate set up for collecting, analysing and disseminating intelligence. This has been attributed to paucity of staff. The Committee are also unhappy to find that there is not even a separate officer in the Directorate to deal with intelligence exclusively. The only official dealing with such matters is doing so in addition to other responsibilities. Even the Secretary of the Ministry during evidence conceded that intelligence set up in the Directorate is "definitely inadequate and deserves to be improved." The Committee are dismayed to note that even after a lapse of more than 20 years the Government has failed in equipping the Directorate with a separate Intelligence Cell under a senior officer for an important function on which depends the effectiveness of the entire Enforcement machinery.

The Committee also wish to lay stress upon the need to have an arrangement whereby the intelligence is received, sifted, evaluated and assessed by officers who are not directly concerned with the operative part of enforcement activity. The Committee believe that this will impart greater objectivity to the functioning of the Directorate as a whole, as also minimise the possibility of enforcement Officers frittering away their energy in following up cases which are either not genuine or where poor intelligence forecloses chances of success.

3.27 The Committee, therefore, are inclined to agree with the views expressed by Secretary, Revenue during evidence that the collection of intelligence as well as its evaluation and assessment are almost inseparable at the operational level. In this regard they wish to point out that as far back in 1979 the Yardi Committee had recommended the setting up of a separate wing at the apex and zonal level of the Directorate of Enforcement for collection and dissemination of intelligence. The same Committee has

also recommended that the Directorate of Intelligence should be entrusted to a special Director with full accountability to the Directorate of Enforcement.

The Committee, therefore, hope that the Government will take expeditious and effective steps to revamp the intelligence set up in the Directorate of Enforcement and, for this purpose, appoint a special officer of sufficient seniority who can exclusively look after the intelligence work. A cell with appropriate staff strength should also be established to assist him in this regard.

3.28 The Committee also desire that the Department of Revenue should take suitable measures in improving special investigation manuals containing material on techniques of evasion of tax, smuggling and foreign exchange violations. These manuals should be supplied to Investigating Officers as already recommended by the Yardi Committee in 1979.

3.29 The Committee are also informed that there exist certain areas of intelligence which fall under the purview of other agencies involved in collection and processing of economic intelligence but are being neglected at present by such agencies.

The Committee hope that adequate steps would now be taken to bring such matters also within the purview of a strengthened intelligence apparatus within the Directorate of Enforcement without duplicating the work of other intelligence agencies. The Committee expect that appropriate additional staff will be authorised to the Directorate for this purpose.

3.30 The Committee also note that a Central Economic Intelligence Bureau has been set-up for coordinating the investigative efforts and enforcement actions by various agencies connected with investigations into economic offences and enforcement of economic laws. The Bureau is expected to maintain liaison with the concerned Departments and Directorates both at the Central as well as State level.

The Committee desire suitable measures be taken to ensure that this Bureau is allowed to function effectively without overlapping the functions of proper intelligence cell in the Directorate of Enforcement.

3.31 The Committee are happy to note that the Directorate is in the process of evolving new methods of collecting intelligence in specified fields.

They hope that these new methods will be expeditiously evolved and utilised for collecting information and intelligence. The Committee would like to be kept informed of the progress achieved in this regard.

3.32 It has been brought to the notice of the Committee that though RBI is the custodian of foreign exchange, their experience had been very disappointing in the matter of monitoring of export proceeds in the matter and there was an urgent need for strengthening the reporting system in the RBI. The Committee urge the Government to take necessary corrective measures in the matter urgently.

B. Raids, Searches and Seizures

3.33 In a note furnished to the Committee the Department has stated that under section 37 of the FER Act, an officer of Enforcement not below the rank of an Assistant Director is empowered to authorise search of a premises, if he has reason to believe that documents, which in his opinion will be useful for or relevant to any investigation or proceedings under the Act are secreted in any such place.

3.34 The Officer of Enforcement issuing an authorisation for search, therefore, evaluates the material in the form of intelligence collected/obtained from source/informant/RBI/Banks/Customs etc. to form a reasonable belief in an objective manner considering gravity of offence.

3.35 The officer issuing authorisation i.e. 'Search Warrant' under Section 37 of the EERA then records in the file why he considers action under Section 37 necessary on the basis of material seen/examined by him and thereafter issues Search Warrant. In some cases information/intelligence obtained may be such that action under Section 37 may be taken at specific time or on any specific happenings.

3.36 The second part of 'Raid or Search i.e. the actual search and seizure of useful or relevant documents/foreign exchange/currency etc. is regulated under sub-section (2) of Section 37 of the Act which lays down that provisions of the Code of Criminal Procedure relating to search are to be followed.

3.37 The corresponding year-wise number of search conducted during the preceding years are as given below:—

	1987	1988	1989
(i) No. of searches conducted.	2959	3071	3273
(ii) Seizure of foreign exchange (Eqvlt. to Rs. in lakhs)	138.42	108.98	517.54
(iii) Seizure of Indian currency (Rs. in lakhs)	410.11	463.37	801.68

3.38 The Committee were informed that the statistics of searches include the personal searches, searches of residential and business premises and searches of vehicles.

3.39 Asked during evidence why despite raids and searches the Enforcement Officers are not able to obtain the desired result, the Secretary, Department of Revenue stated:

"Sometimes it does happen. After all, we are playing with the reputation of the people who have some standing in the society. Therefore, we cannot just go and conduct a search on some suspicion. When we are looking for a certain document, we have to corroborate it with some thing. There also we meet with partial success. About one-third of the search has not yielded the desired results. In some cases, we have got the desired results.

We should go in for a search where we receive very hard intelligence which appears reliable. Where we recovered documents the problem of the authenticity came. Suppose we say, such and such document is not genuine. Then we need the cooperation of that organisation from where it came. So, that takes enormous efforts. And then most of the time the effort was not successful.

3.40 Regarding the difficulties that have been encountered in conducting these raids, the Ministry has stated that the officers conducting raids face following difficulties:—

- (i) The Enforcement Officers going for raids do not have any arms or protection and hence if there is any resistance from the party the officers have to use their tact or face hostile situation.
- (ii) When the premises to be searched are found closed the same could be searched in the presence of witnesses by breaking open the premises. However, after the search, a guard is to be kept till the party comes to take possession. This creates difficulties due to paucity of staff.

3.41 Asked about the remedy/alternative available with the officers conducting raids, in the absence of arms/police protection, the Department has stated that in the absence of a supportive arrangement or infrastructure, supply of arms, their up-keep, custody etc., are likely to create problems for the Department as also for the officers. The present practice of taking police protection, whenever necessary, seems to be working well and may continue.

Objectivity

3.42 About the basis on which searches have been conducted in the past the Department has stated that the various provision relating to searches empower the officer of Enforcement to conduct searches only if the officer has reason to believe that any documents etc. are secreted about any person or in any vehicle or premises and that the said document etc. would be relevant to any investigations etc. under the Act. In the case of premises, power to search is vested only in officers of and above the rank of an Assistant Director of Enforcement (i.e. grade 'A'/Class-I officers only). The reasonable belief is to be formed on the subjective satisfaction of the concerned officer in the field.

3.43 Asked to indicate the policy followed in this regard by Directorate of Enforcement, the Department in a written note has stated that legal position stated alone has always provided the basis for the practice hitherto followed. The present policy is to be more objective in the matter of searches etc. It is proposed to resort to search actions after carefully and discreetly finding out the reputation of the party and then come to a conclusion as objectively as possible in the circumstances of the case. Not

only that, it is proposed that the raiding party should be thoroughly briefed as to the suspected transactions and the nature of documents which are primarily to be searched for and seized. The raiding party would, as far as possible confine their search only for such wanted documents.

Vexatious Searches

3.44 When asked how target for searches are identified and how vexatious and motivated searches are eliminated, the Secretary Department of Revenue replied:-

"I think the first corrective action in this regard is to have no targets for searches as such, on the basis of which the performance of an officer is judged. The targets are only figurative. They are told that they must carry out say 500 searches, otherwise they are punished by adverse entries in the confidential reports.

Secondly what we have to make clear to the Enforcement Officers is that a search has to be conducted only when there is some evidence obtained from reliable sources and it has been verified. In fact, we have gone to the extent of saying that in certain cases the search should be conducted only after showing the evidence about it to the Director."

3.45 In this regard the Secretary, Department of Revenue stated during evidence:-

"One cannot rule out the possibility of searches being conducted—they have been conducted with ulterior motives or *mala fide* intentions. The only way to minimise them is to very closely monitor the searches that are being made and for senior officers to go into the grounds or the intelligence that was available and which was the subject matter of the searches in question; whether a reasonable officer could infer from that evidence that there was *prima facie* evidence of violation and that had warranted a search. Now, monitoring only can bring such malpractices to light and the guilty can perhaps be taken to task."

3.46 Asked how it was ensured that the Directorate does not invite allegations implying lack of objectivity or partisan or politically biased treatment of cases, the Department in a written note clarified :-

"Regarding misuse of powers it has been stated that sufficient safeguards against misuse of powers are provided in the Act itself. In the matter of searches, a report is sent to the Director of Enforcement immediately after the searches. By administrative instructions, it is also provided that a report regarding the arrest of persons should also be sent promptly to the Director of Enforcement. This is to ensure *inter alia* any misuse of the powers vested in the officers posted in the field."

3.47 Asked what institutional reform can be undertaken to minimise the recurrence of vexatious searches in this regard the Secretary Deptt. of Revenue stated during evidence :—

“It is not an easy question to answer. I would only say, with my experience, that in most cases such actions, vexatious kind of actions, by enforcement agencies are rarely taken by the initiative of the junior officers themselves. Because, if something has gone wrong then there is always a fear of getting caught at some stage or the other, inviting action. In fact, what you have perhaps in mind are the kind of things which are done not by the subordinate staff but at the bidding of some verbal or informal instructions from above. In fact, these things can be stopped, as I said, only if senior people and the people above exercise some restraint.”

3.48 The witness added :—

“I do not know whether I will be able to improve further over on what I have already said. My experience for the last 32 years indicate that unless you are able to have officers who can say ‘No’ to certain things this is not possible unless others are able to say that. If you want me to do certain wrong things, I will even lose my job rather than done it.”

C. Arrests

3.49 Asked when the arrests are warranted in case of violation of FERA, the Department has stated that a person can be arrested under Sec. 35 of FERA, 1973, by only a gazetted officer of Enforcement and that too when the officer has reason to believe that the person has been guilty of an offence punishable under the Act. However, with a view of avoiding any misuse of the power by the officers, administrative instructions have also been issued, according to which arrests are to be made in the following situations :—

- (i) When huge amounts are involved and the parties are known to be racketeers.
- (ii) When the case is such that the person is to be prosecuted.
- (iii) When the person is likely to flee or abscond.
- (iv) When the person is likely to tamper with evidence or influence witnesses.

Remedies for the citizen

3.50 With regard to the complaints about functioning of the Department in regard to raids, it has been stated that there are not many complaints. Occasionally complaints are received but they are not of serious nature.

3.51 In reply to another question whether any instances of vexatious

searches have come to the light of Deptt., the Secretary of Deptt. of Revenue replied in negative.

3.52 With regard to safeguard against vexatious searches, the witness of the Deptt. of Revenue stated:—

“The law already provides a safeguard to some extent. Section 58 makes provisions for it, that vexatious searches are punishable. But nobody can file a case.”

3.53 In reply to a question, the Department in a subsequent note has stated that:—

“It is true that private persons have not been successfully prosecuting officers for vexatious searches. However, from the records of the Department we find that there is no case in which private citizens have been granted permission for prosecuting an officer of the Department. It is clear that legal provisions do not help in completely preventing vexatious searches mainly because affected private citizens are afraid of annoying the Department or the political bosses who might have ordered such vexatious searches. How such misuse of powers can be prevented depends mostly on the quality of officers and the value system in the society.”

3.54 The Committee find that in recent years while the number of searches conducted have registered a marginal increase, the amount of foreign and Indian currency seized during such searches has grown manifold. This indeed is indicative of greater accuracy in planning and carrying out searches. Notwithstanding this encouraging trend the Committee are surprised to note that about one third of searches did not yield any result, obviously, for want of hard intelligence. In this context the Committee also note that Enforcement Officers conducting searches sometimes face difficulty in carrying out their duties in absence of adequate protection when the parties searched turn hostile. The Department however, does not consider arming of the Enforcement Officers a practicable proposition and consider the present practice of taking police protection to be appropriate. It has also been pointed out that while conducting searches of the premises in the absence of the owner, sufficient staff is not available to guard such premises after the search is completed and till the arrival of the party.

The Committee while expressing satisfaction at improving searches, seizure ratio would expect the Government to take adequate steps to further improve this ratio. For this they desire that not only the intelligence be strengthened but also sufficient staff and police protection be provided to search parties.

3.55 The Committee are concerned to note the lack of objectivity in conducting the searches. They have been informed that the reasonable belief of the enforcement officers is invariably the ground for searches and that

such belief is formed on the subjective satisfaction of the officer concerned. While the Committee note that it is the policy of the Government to bring more objectivity in such matters they are nevertheless disturbed to find that vexatious searches have been conducted on several occasions. They find it even more disturbing that the Department is unable to vouch against such mala fide actions in future. The practice of fixing targets for such searches as a measure of performance by the Enforcement Officers has been cited as one of the factors responsible for this situation.

The Committee cannot but take a serious view in the matter and urge the Government to immediately review the practice of fixing targets for searches. They also feel that in case such targets are administratively unavoidable due care should be taken to fix them at a realistic level so that officers of Enforcement Directorate in their enthusiasm to achieve targets do not harass the citizen. They would also expect the Government to ensure that such searches are taken up only after thorough evaluation of the veracity of intelligence available. Further, once the search is taken up this should be subject to close monitoring by senior officers in order to bring to light malpractice, if any and to punish the guilty officers.

3.56 The Committee are amazed to find that despite the fact of vexatious searches being an open secret, the Department have not come across any specific instances of this nature. The Committee have been informed that whatever few complaints have been received in this regard have not been of serious nature. It is, therefore, obvious that the affected parties are afraid of further harassment and do not venture to make any complaints. These revelations are also an index of fairness with which the Enforcement Directorate has functioned hitherto. The Committee, therefore, find it least surprising that affected parties have not been successfully prosecuting the Enforcement Officers for vexatious searches, even though the law provides some safeguards to them. The Committee are distressed to find that the Department could not cite even a single case where permission had been granted to the affected parties for prosecuting an officer of the Directorate for carrying vexatious searches. The Committee regret to note, that such searches are often carried out at the instance of higher authorities in the Directorate/Ministry as a result of which an ordinary citizen does not even dare to complain. It is also apparent that legal provisions do not go far in helping the citizens.

The Committee while expressing their deep concern at such state of affairs would urge the Government not only to evolve such a legal and administrative system as would make it difficult for anyone to cause or carry out searches with mala fide motives but would also expect Government to amend the law in such a manner as would give the citizens adequate legal protection against such harassment.

D. Adjudication Process

3.57 Asked to furnish the criteria adopted for adjudication and the norms that are followed, the Department in its reply has stated that adjudication proceedings are carried out under the procedure that has been laid down in the Adjudication and Appeal Rules, 1974, framed by the Government in pursuance of Sec. 79 of the FERA Act.

3.58 Adjudication proceedings are initiated in all the cases, where after investigations, *prima-facie* contravention of any of the provisions of the Act are noticed.

3.59 The powers of the adjudication being quasi-judicial in nature, the matter is left to the adjudicating Officers to record their findings and/or to decide the quantum of penalty to be imposed. The orders thus passed by various adjudicating officers are regularly reviewed and in appropriate cases the FERA Appellate Board is moved for *suo-moto* review as provided u/s 52(4) of the Act.

3.60 Asked to state the average time taken for the settlement/disposal of cases by Enforcement Directorate the Department has stated that on the basis of the material available in the Hqrs. Office in respect of cases adjudicated by the Officers posted therein the average time for the disposal of cases (from the date of issue of show cause notice to date of its adjudication) works out to 14 months approximately.

3.61 With regard to expeditious and effective investigations and adjudication of cases, the Department has stated that some norms will have to be fixed in respect of the maximum period within which the matter has to be finalised. For this, norms will also have to be fixed with regard to the maximum number of cases which an officer should have pending disposal before him at a particular point of time. At present, some cases (other than prosecution cases) initiated more than a decade ago are still pending before one or the other officer or at one or the other stage.

3.62 The Department was asked to furnish a note incorporating therein the suggestions for improving the adjudication process. In the note furnished by the Department following suggestions have been made:-

“It is felt that if the Show Cause Notice is carefully prepared adjudication can be finalised without delay. The investigating officers in the normal course prepare the Show Cause Notice in a very general frame-work, so that they do not have to look into the details of the evidence and the specific nature of the charges. Presently, the Directorate is giving a lot of emphasis on the preparation of specific charges in the Show Cause Notice. The Show Cause Notice should also show the exact evidence that will be produced in support of the charges. There will be no occasion

for the party to ask for documents because all the relevant documents will be enclosed with the Show Cause Notice itself."

3.63 As of now there is a repetition of the issue of Show Cause Notice, first time to decide whether adjudication should be held and second time to decide whether penalty should be imposed. In order to cut delays the first Show Cause Notice can be dispensed with. This will not lead to any miscarriage of justice because the person gets an opportunity to present his case in the adjudication proceedings. It is worth mentioning that there is no such provision of Show Cause Notice being issued twice in the adjudication proceedings in the Customs Act nor such proceedings are followed in Income-tax Act.

3.64 Explaining the charges to the party also can be done away because there is no single case in which the party does not know the charges framed against him.

3.65 According to the present system there is no limit for starting adjudication proceedings from the date of starting the investigation or from the date of commission of the offence. This leads to a psychological feeling among the officers that they are not pressed for deciding the cases expeditiously. A lot of delays will be reduced if a limitation is fixed on the completion of the adjudication from the date of starting the adjudication, between the commission of offence and the issue of the Show Cause Notice, the commencement of the investigations and the issue of Show Cause Notice, and the issue of Show Cause Notice and the completion of the adjudication. The suggestion will be taken up for detailed examination and after discussing with officers about difficulties a final proposal will be submitted to the Govt.

3.66 A lot of delay in the adjudication proceedings takes place because of the difficulty in serving the Show Cause Notice on the party. The present rules allow service by (a) delivering it to the person or his authorised agent (b) sending it to him by Registered Post with acknowledgement (c) affixing on the outer door of the premises in which the person resides.

3.67 It is suggested that two modes of service may be included which can expedite the adjudication process (d) publishing it in the Notice Board of the Directorate of Enforcement (e) publishing it in two local newspapers.

3.68 According to the present rules the Adjudicating Officer has to issue the Show Cause to the party. This provision causes delay if the party resides in Bombay and the adjudication is done by Special Director stationed at Delhi. A system can be introduced in which the Deputy Director, Bombay or the Assistant Director, Bombay can issue the Show Cause Notice to the party in Bombay with instructions to appear before the Special Director in Delhi who will adjudicate the case. This method will cut down some of the delay.

3.69 The Secretary, Deptt. of Revenue stated during evidence that

keeping in view the number of existing officers and cases in their hand, and the heavy workload with them the officers are not able to dispose of the cases which they are supposed to dispose of. Even then the Committee were assured of putting additional staff on the job so as to make the adjudication process time-bound.

E. Appeals before FERA Board

3.70 The Committee have been informed that Foreign Exchange Regulations Appellate Board has been constituted for the purposes of hearing appeals against the orders of the Adjudicating Officers. The first appeal against any adjudication order lies with this Board.

3.71 The Ministry has furnished the following statistics of Appeals which have been pending before FERA Board during the last three years:—

Year	Opening Balance	Registered during the Year	Total of (2) & (3)	Decided during the year	Pending at the close of the year
1987	1213	446	1659	575 35%	1084 65%
1988	1084	599	1683	527 31%	1156 69%
1989	1156	570	1726	458 27%	1268 73%

(as on 31.12.1989)

3.72 The Committee were informed that the oldest appeals pending disposal, before the FERA Appellate Board pertain to the year 1977.

3.73 Regarding the steps taken for expeditious disposal of large number of pending appeals it has been stated that these appeals are pending on account of certain court proceedings and that the Board was making efforts to dispose of older appeals on priority basis.

3.74 The Department attributed the marginal increase in the filing of appeals to the increase in the number of cases adjudicated during the year 1988.

3.75 As provided under FERA the Enforcement Officers exercise powers of adjudication in regard to cases of FERA violations. These powers are exercised in a quasi-judicial manner and orders passed thereafter are also subject to review by FERA Appellate Board. The Committee were informed that on an average the adjudication of cases takes about 14 months. The Committee are disconcerted to observe that between 1987 and 1989 a high proportion of the cases registered, approximating to almost 73% have been laying pending. They are shocked to find that some cases which are more than ten years old are still pending at various stages of adjudication. The Committee have also been informed that the Department is considering various suggestions to expedite adjudication cases. In this context they are also constrained to note that even after a lapse of 18 years no norms have been fixed in regard to maximum period within which a case has to be finalised. The Committee believe that it is essential in this regard to arrive at a rational norm in regard to the number of cases an officer can dispose

of within a given period. The Committee also find that no time limit has been fixed for registration of the cases. The Committee are of the firm view that adjudication process should be time bound.

They, therefore, urge that reasonable time-limits may be fixed without further delay. They also hope that suggestions spelt out by the Department for reducing delays will be implemented forthwith. Similarly time limit may be fixed for registration of cases.

3.76 The Committee will like to advise the Directorate not to overburden its officers with large number of cases as such a practice can only result in delays in adjudication and non-observance of whatever norms may be adopted for assessing their performance. They, therefore, urge the Government to look into this aspect with due seriousness. They also desire to be informed about the steps taken in this regard.

3.77 The Committee have been informed that one of the main reasons for delay is that Show Cause Notice are being prepared on an offhand manner without incorporating specific charges and without looking into the details of evidence. This not only delays adjudication proceedings but also results in harassment to the concerned parties as they have to ask for this information again and again.

The Committee desire that specific and detailed guidelines may be issued to the concerned officers in this regard and action taken in case these are not followed.

3.78 The Committee also regret to find that as on 31st December, 1989, 1268 appeals were pending before the FERA Board and that some of these appeals pertain to the year 1977. They are further dismayed to note that the percentage of disposal of the appeals during 1987, 1988 and 1989 has been as low as 35%, 31% and 27% respectively. The Committee are, therefore, constrained to conclude that the above shortage of officers indicates a casual approach of the Government in clearing the backlog.

The Committee would like the Ministry to take immediate steps so that the backlog of appeals can be cleared expeditiously.

F. Prosecution Cases

3.79 Section 56 of the FERA Act provides that if any person contravenes any of the provisions of this Act or any rule, direction or any order made thereunder, he shall upon conviction by a Court, be punishable with imprisonment for a term which may be for a period from six months to 7 years.

3.80 Section 57 of the said Act states if any person fails to pay the penalty imposed by the adjudicating officer or the Appellate Board or the High Court or fails to comply with any of his or its directions or orders, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years or with fine or with both.

3.81 The Department has furnished to the Committee the following statistics in regard to prosecution cases filed during the last three years and the results thereof:—

	1987		1988		1989	
	U/s. 56	U/s. 57	U/s. 56	U/s. 57	U/s. 56	U/s. 57
No. of prosecutions launched during the year	106	41	124	197	234	209
Out of above No. of cases so far decided:						
(a) Convicted	23	21	40	71	44	39
(b) Acquitted/withdrawn etc.	29	—	14	31	—	33
Balance	54	20	70	95	190	137

3.82 With regard to the average period for disposal of prosecution cases, it has been stated that the average period for disposal of prosecution cases during 1987, 1988 and 1989 roughly works out as under:

	U/s. 57	U/s. 56
	Non-payment of penalty	Other than non-payment of penalty
Bombay	6½ months	18 months
Madras	6 months	24-36 months
Calcutta	14.5 months	59.1 months
Delhi	20.3 months	33.3 months
Jalandhar	12 months	36 to 48 months

Court Cases

3.83 Under Sec. 54 of FERA the appeal against the orders of the FERA Appellate Board lies with the High Court. It is provided thereunder that the appeal to High Court shall be on a question of law. Parties move the High Court direct in appropriate cases under Article 226 of the Constitution in the form of writ petitions.

3.84 The Department furnished the following detail; about the number of cases filed in the Court during the last 3 years under Section 56 and 57 of FERA, 1973 and the total amount involved therein:

Year	No. of Cases	Amount involved
1987	147	Rs. 1066.08 lakhs
1988	321	Rs. 2606.82 lakhs
1989	443	Rs. 870.08 lakhs

3.85 The Department attributed the increasing trend of court cases to the practice of fixing targets in respect of various types of

offences. When asked to explain the decrease in the total amount involved in such cases Department stated that in their anxiety to achieve targets even cases involving small amounts were being filed by the Enforcement Officer.

3.86 Asked to explain the time variation in disposing of cases at different stations and its underlying causes, the Department has stated that there are no special courts set up in various States to try cases of economic offences. No systematic study has been made, so far, in the Enforcement Directorate, to find out precisely the reasons for the time taken by a court in disposal of cases depends upon the workload with the particular court and the factors which are peculiar to judicial procedure adopted by trial courts. As to the remedial measure, the Central Economic Intelligence Bureau has recently taken up this matter for study and for suggesting setting up of more special courts at different places with a view to expediting disposal of prosecutions cases pending before such special courts.

3.87 Asked how the present time lag in the disposal of cases can be reduced the Department has stated that more special courts, which would be manned by departmental officers drawn from Enforcement, Custom and Excise and Income Tax Departments, with appropriate legal qualifications may be set up. Such courts can exclusively try cases under FERA, Customs and Income Tax Acts.

3.88 With regard to pending prosecution cases, the Secretary of the Ministry of Finance during evidence stated:—

“This is a problem which is common to all the enforcement agencies, not only to the Directorate of Enforcement which has, of course, comparatively smaller number of cases. A very large number of cases, income-tax cases, customs and excise duty are also pending and have not seen the light of day for eight, nine or ten years.”.

3.89 In this context Secretary further stated:—

“There are two solutions to this problem. Firstly, Special Courts are absolutely indispensable. We have to have sufficient number of Special Courts in all the States. We have identified the workload of each State and we have circulated a note on this for the Chief Ministers’ Conference, which was postponed twice...We have said that the States must be encouraged because economic offences must have to get special attention. There have to be Magistrates and people who develop insight and a sort of specialised knowledge into these very complex laws. The other part is the very inadequate defence and prosecution on the part of the Government. Although I collect a major part of the revenue.....which is about —Rs. 56000 crores we have no freedom at all in selecting the lawyer. The lawyers are poorly paid, totally ill motivated. Our lawyer gets

Rs. 300 per day whereas the lawyer for the companies or the FERA violater gets. Rs. 15000. There is no comparison between the two. I have, in my humble judgement, prepared a detailed note for the Committee of Secretaries and submitted for their consideration that for economic offences special dispensation will have to be given and we will have to be allowed special counsels at a higher fees and the freedom will have to be given.”

5. Detentions under COFEPOSA

3.90 The Directorate of Enforcement recommends cases for detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) (COFEPOSA) which provides, *inter-alia*, for detention of a person with a view to preventing him from acting in a manner prejudicial to the conservation and augmentation of foreign exchange. In doing so, it has to prepare dossiers and the various grounds for detention. It further assists the State Authorities in locating and detaining the persons against whom detention orders are issued. The connected work relating to the detenu e.g. presenting/contesting cases before the Advisory Board and/or Courts is also attended to by it.

3.91 The Department has furnished the details of cases during 1988 to 1990 as per statement at Appendix.

3.92 Regarding the difficulties encountered in the quick disposal of detention cases, the Ministry has stated that in some cases stay has been granted by the High Courts particularly Calcutta High Court.

3.93 Explaining the point further the Secretary of the Ministry stated during evidence that the number of detention cases have also increased because the Ministry has become more active. He further stated that over-emphasis on the numbers may not lead to a correct appreciation of performance of Directorate of Enforcement and that it may also result in the unwarranted detentions by overzealous officers.

APPENDIX

Statistical Data of COFEPOSA proposals made by the
Enforcement Directorate

Year	No. of proposals sent to the Competent Detaining Authority	No. of Persons against whom detention orders issued by the Detaining Authority out of Col. 1	No. of persons detained actually upto (17.8.90) (out of Col. 2)	No. of detention order revoked by Central Govt. out of Col. 2 (Before actual detention)	No. of Detention orders pending execution out of Col. 2	No. of persons released by Advisory Board out of Col. 3 upto 17.8.90
1	2	3	4	5	6	7
1988	116	102	84	-	18*	13
1989	177	149	111	-	38**	15
1990 upto 30.6.90	83	70	38	-	32***	4

* 1 person has obtained stay from Calcutta High Court.

** 7 persons have obtained stay from Calcutta High Court and one person died before execution of Detention Order.

*** 5 persons have obtained stay from Calcutta High Court.

3.94 The Committee note that during the period 1987 to 1989 out of 911 cases under prosecution for violation of FERA only 345 could be finalised. The balance 566 cases were pending in different courts at the end of 1989. They also note that average period for disposal of cases has been varying from place to place. The Committee are, therefore, constrained to infer that the pace of disposal of cases being prosecuted has been tardy. Consequently the pendency of such cases in courts has been increasing day by day. The Committee also find that no systematic study has ever been conducted to ascertain the reasons for this situation. In this context they were informed during evidence that the problem was attributable to general overburdening of civil courts at various levels as also to inadequate defence of such cases on the part of the Government. The Committee were further apprised that economic offenders were often able to obtain the services of the best legal professionals. As against this the Department has to be content with the services of lawyers who are poorly paid and totally ill-motivated even in cases involving substantial sums of money. It was suggested that not only special courts be set up for the purposes of prosecuting economic offenders, but also that such courts should be manned by the officials from the Directorate of Enforcement and the Departments of Customs and Central Excise and the Income-Tax subject to their having appropriate legal qualifications.

3.95 The Committee have no hesitation in recommending that Government should take immediate steps to set up special courts for economic offenders in consultation with the State Governments. For this purpose they also recommend that the matter may be deliberated upon in the next Conference of Chief Ministers to be convened at an early date. The Committee, however, are not convinced by the argument that such courts would become efficient by merely appointing officers drawn from the above mentioned organisations. On the contrary such a step may result in judicial improprieties.

3.96 The Committee are of the firm opinion that the Department should have freedom to engage lawyers of known competence without being obliged to confine their choice to a panel lawyers of Central Government. The Committee, therefore strongly support the need of the Department to have sufficient financial powers for obtaining services of lawyers of appropriate standing in order to defend in the courts of law cases involving large sums of money. They urge the Government to examine this matter with earnestness in consultation with the Ministry of Law.

The Committee would also like to stress upon the need for strengthening the legal set up within the Directorate of Enforcement. For this purpose they recommend creation of attractive promotion prospects in order to draw and retain officers of sound legal knowledge and experience. The Ministry may also appoint officers of sufficient experience

and legal background on contract basis. The Committee would also desire the Ministry to review the present time-lag in disposal of cases at different places and take necessary remedial measures in this regard.

3.97 The Committee find that officers of the Directorate have been given very wide powers for recommending cases for detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) to prevent any person from acting in a manner prejudicial to the conservation and augmentation of foreign exchange. The Committee are of the view that the likelihood of such powers being misused cannot be ruled out defeating the very purpose for which the Act was enacted.

The Committee therefore desire the Ministry to provide suitable safeguards to ensure that such powers are not misused and innocent persons are not harrassed. The Committee would also like to be kept informed of the progress achieved in this regard.

CHAPTER IV

ORGANISATIONAL ASPECTS

A. Organisation

4.1 The Department in a note furnished to the Committee regarding organisational structure and functions of the Directorate has stated, that in the initial stages, looking into the operational requirement, the offices were located at the four metropolitan cities, having international airports and / or ports as these were the main centres of export and import and thus had a bearing on transaction in Foreign Exchange.

4.2 These cities were also the major centres of illegal purchase and sale of foreign exchange as well as compensatory payments resulting in leakage of foreign exchange. Subsequently as and when at a particular area a particular type of unauthorised trading and malpractice relating thereto were noticed, sub-zonal offices and units were created, for the purpose of providing support to the zonal offices. While setting up the offices at such other places, the following aspects were kept in view:

(i) The number of people from the particular region settled outside India, who were sending compensatory payments from outside India.

(ii) Centres of export of certain types of goods etc.

4.3 At present the Enforcement Directorate has its headquarters at New Delhi and five zonal offices at Bombay, Calcutta, Delhi, Jalandhar and Madras. The Director of Enforcement is the head of the organisation. The zonal offices are headed by Deputy Directors. The Directorate has 8 sub-zonal offices at Agra, Srinagar, Varanasi, Trivandrum, Calicut, Ahmedabad, Bangalore and Goa, which are headed by Assistant Directors. The Directorate also has 4 units at Jaipur, Hyderabad, Madurai and Guwahati headed by Chief Enforcement Officer. Besides, there is also a Special Unit at Calcutta, headed by a Deputy Director, which was created in October, 1979 for the purpose of investigating certain important groups of cases. An organisational chart of the Directorate is at Appendix 'A'.

4.4 When asked by the Committee whether there were any organisational deficiencies in the Directorate, the Secretary, during evidence replied in the affirmative. In his view the Department was considered to be a temporary entity and an impression also exist that there would be no need for an Enforcement Directorate when this country would move towards a deregulated economy under which rupee would be a freely convertible currency. Consequently, he felt, sufficient attention has

not been given to the Department hitherto. The other factor which had created organisational difficulties was that Directorate had remained under the control of various Departments. The Directorate also faced serious deficiencies with regard to non-availability of trained manpower. This aspect has been dealt with in Chapter—Training.

4.5 The Department has stated that a Report of a Study Group headed by Shri M.R. Yardi, ICS (retired) on the working of the Enforcement Agencies of the Department of Revenue of the Ministry of Finance was prepared.

ORGANISATIONAL CHART OF THE ENFORCEMENT DIRECTORATE

(Headquarters Office, New Delhi)

DIRECTOR

SPECIAL DIRECTORS

ADDITIONAL DIRECTOR

DEPUTY DIRECTORS

DEPUTY LEGAL ADVISERS

ASSISTANT DIRECTORS

HINDI OFFICER

CHIEF ENFORCEMENT OFFICERS

ZONAL OFFICES/SUB-ZONAL OFFICES/FIELD UNITS

SPECIAL DIRECTORS
DEPUTY DIRECTORS
BOMBAY ZONE

DEPUTY DIRECTOR
CALCUTTA ZONE

DEPUTY DIRECTOR,
SPECIAL UNIT, CALCUTTA

DEPUTY DIRECTOR
DELHI ZONE

ASSISTANT DIRECTORS
CHIEF ENFORCEMENT OFFICERS

ASSISTANT LEGAL ADVISER

ASSISTANT DIRECTOR, SUB-ZONE, AHMEDABAD
CHIEF ENFORCEMENT OFFICER

ASSISTANT DIRECTOR, SUB-ZONE, GOA

ASSISTANT DIRECTORS
CHIEF ENFORCEMENT OFFICERS

ASSISTANT LEGAL ADVISER

CHIEF ENFORCEMENT OFFICER, FIELD UNIT, GAUHATI

INVESTIGATING OFFICERS
INSPECTING OFFICERS,
CHIEF ENFORCEMENT OFFICERS

ASSISTANT DIRECTOR
SUB-ZONE
VARANASI

ASSISTANT DIRECTORS
CHIEF ENFORCEMENT OFFICERS

ASSISTANT LEGAL ADVISER

ASSISTANT DIRECTOR, SUB-ZONE, AGRA

CHIEF ENFORCEMENT OFFICER, FIELD UNIT, JAIPUR

DEPUTY DIRECTOR,
JULLUNDUR ZONE

ADDL. DIRECTOR
DEPUTY DIRECTOR,
MADRAS ZONE

ASSISTANT DIRECTORS
CHIEF ENFORCEMENT OFFICERS

ASSISTANT DIRECTOR, SUB-ZONE, SRINAGAR

ASSISTANT DIRECTORS
CHIEF ENFORCEMENT OFFICERS

ASSISTANT LEGAL ADVISER

ASSISTANT DIRECTOR, SUB-ZONE, BANGALORE

ASSISTANT DIRECTOR, SUB-ZONE, CALCUTTA

ASSISTANT DIRECTOR, SUB-ZONE, TRIVANDRUM

CHIEF ENFORCEMENT OFFICER, FIELD UNIT, HYDERABAD

CHIEF ENFORCEMENT OFFICER, FIELD UNIT, MADURAI

4.6 In a subsequent note the Department has furnished the position of acceptance and implementation of Yardi Committee recommendations concerning the Directorate of Enforcement (Annexure enclosed). The Department has also stated that the question of setting up a group of officers to be entrusted with the task of examining the Yardi Committee recommendations is under proposed action.

B. Staff strength

4.7 Asked to state whether the existing Staff strength is adequate in regard to the aims and objectives for which this Directorate was set up, the Ministry has stated that the existing organisational set-up of the Directorate has over the period of its existence not grown adequately Commensurate with the aims and objective for which it was created. The obvious reason is paucity of staff. The total sanctioned strength of the Directorate is 802 posts at various levels as shown in Appendix 'B'. Of this 195 posts are of class IV staff and drivers. The staff borne on various ministerial cadres adds upto 258 posts. The actual strength of officers meant for the purpose of actually enforcing the provisions of the Act and comprising of Directors, Deputy Directors, Assistant Directors, Chief Enforcement Officers, Enforcement Officers and Assistant Enforcement Officer comes to only 338. The true working strength of the Directorate at any point is, however, lower than the sanctioned strength; and this does affect the functioning of the organisation.

APPENDIX 'B'

Staff strength

Designation	Sanction Strength	Working of Strength as on 2.7.90	Vacancy Position	Reserved Categories
(1)	(2)	(3)	(4)	(5)
Class-I				
Director of Enforcement	1	1	—	—
Special Director	5	2	3	—
Additional Director	2	2	—	—
Deputy Director	9	9	—	—
Dy. Legal Adviser	2	2	—	—
Asstt. Director	34	29	5	1 SC
Asstt. Legal Adviser	4	1	3	—

	(1)	(2)	(3)	(4)	(5)
Class-II					
Ch. Enforcement Officer	39	34	5	1	SC
Hindi Officer	1	1	—	—	—
Class-III					
(Gazetted)					
Enforcement Officer	104	99	5	—	—
(Non-Gazetted)					
Superintendent	8	8	—	—	—
Presenting Officer	1	—	1	—	—
Aastt. Enforcement Officer	144	119	25	5	SC & 2 EX. S.
Assistant	34	32	2	—	—
Upper Division Clerk	58	58	—	—	—
Lower Division Clerk	90	80	10	2	SC
Stenographer (Upgrade)	1	—	1	—	—
Stenographer Gr. I	1	—	1	—	—
Stenographer Gr. II	3	3	—	—	—
Stenographer Gr. III	54	45	9	1	SC
Hindi Stenographer	1	1	—	1	SC
Lady Searcher	4	4	—	—	—
Telex Operator	2	1	1	1	ST
Senior Hindi Translator	5	2	3	1	ST
Driver	29	25	4	1	SC
Class-IV					
Jamadar	1	1	—	—	—
Generator Operator	5	5	—	—	—
Daftry	9	9	—	—	—
Sepoy	111	111	—	—	—
Chowkidar	36	36	—	—	—
Sweeper	3	3	—	—	—
Prash	1	1	—	—	—
TOTAL:	802	724	78	SC 11	ST 2
				Ex.S. 2	

4.8 The Ministry has furnished the following reasons for vacancies in different categories.

4.9 With regard to posts of Special Director and Assistant Director and Assistant Legal Advisor, the matter is pending with Ministry / UPSC for selection of suitable officers.

4.10 Selections of Officers for the posts of Chief Enforcement Officer would be made shortly.

4.11 For the post of Enforcement Officer, appointment letters have been issued to three officers. Process for the remaining two is going on.

4.12 With regard to filling the post of Presenting Officer the candidates are being invited to offer options. For the post of Assistant Enforcement Officer nomination for all 25 posts are awaited from SSC. Results have been declared by SSC in July 1990 and dossiers are expected shortly.

4.13 For Assistant and Stenos and LDC etc. nomination is awaited from Calcutta / Bombay / New Delhi and SSC etc.

4.14 The Ministry has stated that the manpower requirements of the Directorate need to be re-assessed in the light of the increased workload and on the basis of the unquantifiable factors which have a direct bearing on the man-hours spent in performing different functions.

4.15 With regard to existing deficiency, the representative of the Directorate of Enforcement, during evidence, stated:

“There is a difference between our requirement of officers and the number of cases that come to us. We have 300 officers in the whole of India, and the number of cases that come to us for investigation is in thousands. As a result of this, each officer is saddled with a large number of cases. That is why the delay occurs. There are cases which we have to take up by force of circumstances even though we would not have taken them otherwise.”

4.16 The Secretary of the Ministry added:—

“There is need for strengthening of the organisation in various areas like Intelligence, Vigilance and so on. There may also be need for strengthening it at the operational level to cope up with the increasing work. The quality is much more important than the quantity.”

4.17 With regard to the shortage of staff, the Director of Enforcement during evidence stated:

“We get people from the Staff Selection Board. Many of the people get employment outside and they are not able to give candidates against those vacancies. We have got 25 officers against the sanctioned strength of 144.”

4.18 In this regard the Secretary of the Ministry added:

“The remedy lies with the Staff Selection Board. They have to keep more people on the panel than the vacancies.”

4.19 The Secretary further stated:—

“We have discussed this matter with the Staff Selection Board. We have requested them to recruit more people and we will place them on the panel because we consider Enforcement to be a priority.”

4.20 The Department in a subsequent note, has enumerated the following steps, taken by them to fill the vacancies in different posts in the Enforcement Directorates.

Special Director

4.21 The proposal for filling up the posts is already under consideration of the Ministry and is taking some time as the vacancies have to be filled in consultation with the UPSC.

Assistant Legal Adviser (Class I)

4.22 The selection is to be made by the UPSC, which has already fixed a date of holding interviews from a panel of candidates which has been drawn up for this purpose. The posts are expected to be filled up shortly.

Assistant Enforcement Officer

4.23 In respect of all the 24 vacancies, nominations have now been received from the Staff Selection Commission and the appointment letters are being issued after completing verification formalities relating to character and antecedents. However, the difficulty that arises in filling up these posts is that the Staff Selection Commission holds examination only once in a year and does not prepare a reserve panel for nominating suitable candidates in case some of the candidates decline the appointment offered to them.

4.24 In reply to question the Ministry has stated that as a result of the paucity of staff arrears of work at various levels have accumulated to an alarming extent. Besides, the quality of investigations etc. has also inevitably suffered. Given the intake of fresh cases, if the arrears are to be kept at a desirable level, the staff strength has to be increased immediately.

C. Staff Inspection Unit Study

4.25 The Committee have been informed that some posts were sanctioned after Staff Inspection Unit Study in 1974.

4.26 Asked to furnish the SIU report, the Ministry has stated that the report of SIU submitted to the Deptt. of Personnel during the month of August to July, 1973 is not readily available in the Directorate.

4.27 Asked whether any steps have been taken since 1974 for a second study of manpower requirement, the Ministry has stated that the proposal of the Enforcement Directorate for additional staff submitted on 17.7.1981 to the Department of Revenue was also referred to the SIU. The SIU made a quick study of a few areas of the Directorate's working and submitted its report on 11.1.1982 to the Department of Revenue, in which SIU had suggested a marginal increase in staff as an interim measure till the detailed study was completed by them. On the basis of this interim report dated 11.1.82, 52 new posts were sanctioned by the Government vide sanction order dated 20.10.1982. The results of the study conducted departmentally were examined in 1989 but it was decided that in view of the proposed shift in emphasis to more intensive investigation and to reduce the reliance on targets, some more time be taken to assess the staff requirements and work load of the Directorate. Ministry has been informed accordingly.

4.28 The Ministry has further stated that a carefully prepared proposal was submitted by the Enforcement Directorate about 9 years ago, which was referred to the SIU. On the recommendations of the SIU, as contained in its interim report, 52 new posts of Assistant Directors, Chief Enforcement Officers, Enforcement Officers and Assistant Enforcement Officers were sanctioned in October, 1982, pending finalisation of the inspection/study by SIU. However, fresh staffing proposals have to be worked out after a comprehensive survey is undertaken for this purpose.

4.29 With regard to an inbuilt system for conducting such studies at regular intervals to ensure smooth flow of work, the Department has stated that there is no institutionalised system of conducting studies of this nature. The manpower requirements of the Directorate are however being assessed afresh in the light of our overall need to improve the quality of investigation and to select certain areas for a more detailed enquiry. The Ministry may consider to entrust this job to the Directorate of O&M Services of the Customs and Central Excise, who make such studies for the Customs and Central Excise Collectorate etc.

D. Training

4.30 The Ministry of Finance Department of Revenue has stated that a need has been felt for training the staff of the Directorate in certain related subjects, such as overseas banking, accountancy and Company Law Procedures. The possibility of drawing upon certain other

Departments for staff with expertise in these fields has also been considered.

4.31 Asked to state the action taken in this regard the Department has stated that the question of training of the officers of the Directorate in certain selected subjects such as overseas banking, accountancy, Company Law Procedures, etc. is under consideration of the Enforcement Directorate. The proposal for the Directorate for drawing up officers, with expertise in such subjects, from other Departments, also, is still at initial stage of consideration in the Directorate. However a system of holding work-shops for examining cases with a view to seeking suggestions for better investigation has since been started. Such workshops are now being held regularly.

4.32 In this regard the Secretary of the Ministry has stated that there is still no arrangement for training in the department. It is true that department had organised some workshops but these are not likely to yield desired results. He further added, "If some one is appointed as a constable in department, first of all he is imparted the necessary legal knowledge and taught how to apply the provisions of Indian Penal Code. However, such personnel do not possess sufficient knowledge of various provisions of FERA. The Inspectors, who join the department are selected directly by UPSC. They are put on the job without being imparted any training and without any knowledge of the provisions of Cr. P.C. and other laws. They do not even know the techniques of investigation. This makes the task of investigation by the Enforcement Directorate quite complicated. It involves investigation of big companies and big people and such matter, are dealt with which require complete knowledge of international trade. It is proposed that the department should make arrangement for the training of all such persons and to conduct refresher courses for those who are already in service. New persons should be imparted training. Yardi Committee had recommended that new entrants and other persons should be imparted training along with the custom staff so as to enable them to attain necessary efficiency.

4.33 The Committee are distressed to find that organisational aspects of the Directorate of Enforcement have received little attention hitherto, partly due to perceived impermanance of FERA in the initial years of its formation. The Committee are inclined to think that this neglect is due to the Directorate being placed under different departments at different times.

The Committee hope that the Government will now pay serious attention to the organisational aspects of Enforment Directorate.

4.34 The Committee note with concern that the organisational set up of the Directorate has not grown proportionally in relation to the aims and objectives for which it was created. They were also informed by the Secretary of the Ministry during evidence that there is need for strengthening of the organisation in various areas like intelligence and

vigilance etc. The Committee find that out of 802 sanctioned staff strength 78 posts including the posts of Special Director, Chief Enforcement Officer, Enforcement Officer and Asstt. Director have been lying vacant since long. This has obviously affected the functioning of the Directorate adversely. The Committee find that shortage of staff has not only resulted in arrears of work, but the quality of work has also deteriorated.

They cannot but take a serious view of this unhappy situation. The Committee, therefore, expect the Government to fill up all vacant posts, without further delay.

4.35 The Committee note that Staff Inspection Unit had carried out in 1974 a study of manpower requirement in the Directorate. The Committee find it unfortunate that this report is not available with the Ministry and that no regular study has been carried out in this regard after 1974. They also find that at present there is no regular and systematic procedure for the assessment of staff strength of Directorate. They were however, informed that the man power needs of the Directorate are being reassessed in the light of its current work load.

The Committee recommend that the Ministry should take up with immediate effect, the re-assessment of staff strength of the Directorate, and equip the Directorate with adequate staff commensurate with its current work-load.

4.36 The Committee are also of the view that there should be regular periodical review of the manpower requirement in the Directorate to maintain the health of this organisation.

4.37 The Committee are unhappy to note that there is still no proper arrangement for imparting training to the staff in the Deptt. Though the Directorate has been organising some training workshops the requisite benefit could not be derived owing to lack of focus in this effort. The committee find that the Yardi Committee had recommended that the new entrants and other persons should be imparted training alongwith customs staff so as to enable them to attain efficiency in various provisions of FERA and other Economic Laws including the aspect of inspection and searches. They have also been informed that need has been felt for training the staff of the Directorate in certain related subjects such as overseas banking, accountancy and company law procedure and that a proposal in this regard is under consideration.

4.38 The Committee need hardly emphasize the paramount importance of imparting regular and indepth training in these subjects to the officers/staff of the Directorate.

4.39 The Committee, therefore, desire that not only the officers at higher level but also those at middle and lower levels should be regularly trained so as to acquaint them with relevant aspects of commercial law accounting and Practices, besides the modern techniques of investigation. The Committee would expect the Ministry to continue to organise workshops at regular intervals for the purpose.

CHAPTER V

ENFORCEMENT MACHINERY AND THE CITIZEN

A Complaints/Grievances

5.1 The Department in a note furnished to the Committee has stated that there are not many complaints about the functioning of Enforcement Directorate. Occasionally Directorate receives complaints but they are not of serious nature. The complaints received generally relate to undue harassment caused to complainants by the searches which according to them are not warranted.

5.2 With regard to handling of such complaints, the Department has stated that on receipt of such complaints reports/records relating to the case are called for from the concerned field office, by the Director of Public Grievances (Deputy Director of Enforcement, HQRS). After carefully going through the same a decision is taken by the Director of Public Grievances and, where necessary, the head of the Department is also consulted.

5.3 Asked to state the difficulties experienced in fulfilling the responsibility, the Department has stated that no difficulty has so far been experienced.

5.4 Asked to furnish the illustrative examples of these complaints and their disposal, the Department has stated that the complaints are regarding integrity of the officers who are alleged to have demanded bribe from the persons who have been searched or proceeded against, for setting their cases in their favour etc. In order to come to the conclusion whether there is any substance in the allegations made in the complaints, the Zonal Deputy Directors are requested to make discreet enquiries and send their report. In some cases, the complainants are also requested at the given address to come forward with some tangible evidence, as such complaints are frequently pseudonymous and posted from false addresses. Mostly such letters are received back undelivered with the remarks that no such person resides at the said address. These complaints are therefore treated as baseless and hence closed.

5.5 The Committee have been furnished the following figures of complaints received and handeled during the last 3 years:—

	Opening Balance	Received during the year	Complaints disposed of	Closing balance at end of year
1988	3	34	23	14
1989	14	41	29	26
1990	26	17	20	23

5.6 Asked who determined whether a complaint was of serious nature, the Department has stated that the following authorities determined the seriousness of complaints

- | | | |
|------|---------------------------------------|---|
| i) | Complaint against Group 'A' | Secretary, Department of Revenue. |
| ii) | Complaint against Group 'B' Officers. | Director of Enforcement |
| iii) | Complaint against Group 'C' Officers. | Deputy Director (Admn.) of Enforcement Dte. Hqrs. Office. |
| iv) | Complaint against Group 'D' Officers. | Deputy Director of Zonal Office. |

B. Grievances Redressal Machinery

5.7 The Ministry in a note furnished to the Committee has stated that a Deputy Director of Enforcement in the Hqrs. Office has been appointed as incharge of the grievances machinery in the whole Directorate of Enforcement, and is functioning as Director of Public Grievances. At every zonal and sub-zonal offices of the Enforcement Directorate an officer not below the rank of Assistant Director is incharge of the public grievance machinery and he is designated as "Public Grievances Officer"

5.8 The Director of Public Grievances (Dy. Director of Enforcement) is responsible for the timely redressal of grievances in the whole Directorate and he ensures that decision on grievances which are pending for 3 months are taken promptly. In case where any aggrieved party is not satisfied with the redressal of grievance by zonal and sub-zonal offices and approaches the Director of Public Grievances for a decision, then the

Director of Grievances in consultation with the Director of Enforcement takes a suitable decision.

C. Vigilance

5.9 With regard to system of keeping vigilance over the officers the Department has stated that there is a system of drawing up in consultation with the CBI, a list of officers of doubtful integrity and their conduct and work is kept under observation for the period of one year. The list is revised every year after following the system of consultation with CBI. Such officers are, as far as possible, not posted to charges which bring them into contact with public. Disciplinary action is of course, initiated on specific complaints which are substantiated with fact. Certain officers of doubtful integrity and possessing disproportionate assets have been proceeded against. These efforts have been reasonably successful in keeping a check on the integrity of the officers.

5.10 Asked to furnish the number of vigilance/corruption cases outstanding during the last three years and also the number of cases disposed of during this period, the Ministry has furnished the following figures or vigilance/corruption cases registered and disposed of during the last three years:

Period	Opening Balance	cases regd.	Total	Disposed of	Balance
1.7.87—31.12.87	3	1	4	—	4
1.1.88—31.12.88	4	3	7	1	6
11.1.89—31.12.89	6	1	7	2	5
1.1.90—30.6.90	5	1	6	—	6

5.11 Giving the justification for a long pendency, the Department has stated that of the 6 cases shown as pending on the Preliminary Material one case has since been disposed in the month of July, 1990. The position with regard to the remaining five cases is as under:

1. Pending with the Inquiry Officer nominated by CVC.
2. Report of the Preliminary enquiry has been received. Action for initiating disciplinary proceedings is being taken.
3. Cases investigated by CBI. On the basis of advice of the CVC action for initiating disciplinary proceedings is being taken.
4. Sanction for prosecution by CBI has been given cases pending trial.
5. Cases relates to raid by CBI. The case has been finally heard by the Inquiry Officer on 27.7.90. His report is awaited.

These cases relate to:-

1. Acceptance of bribe.
2. Deposing in favour of accused.
3. Undue delay in dealing with official matters.

5.12 With regard to measures taken to dispose of cases, the Department has stated that efforts are being made to dispose of the cases expeditiously as possible.

5.13 Asked how many cases were pending for more than six months, the Department has stated that no case is pending over six months.

5.14 In this regard the Secretary of Department of Revenue added during evidence that his Department has issued directions that more attention should be paid towards vigilance. If there is shortage of officers or other staff anywhere, proposals regarding this should be send to him so that the vigilance is strengthened further.

5.15 During evidence the Committee asked the Secretary, Department of Revenue to indicate the manner in which the problem of corruption in the Directorate of Enforcement was being tackled. In reply, the Secretary stated, "The Hon. Members have raised the question of corruption in the Enforcement Directorate keeping in view the wide powers vested in it. It is true that considerable possibility for corruption exists in the Directorate and even where certain vigilance cases have been instituted no effective measures have been taken. The problem is that whatever complaints are received are mostly anonymous in nature. Such complaints do not reveal the name and address of the complainant. The fact is that neither the party giving the bribe nor the party accepting it ever complained because both stands benefited by the act of bribery. However, in accordance with the Government rules a list is prepared in consultation with CBI and the names of such officers are included whose integrity is in doubt and watch is kept on them. But it is debatable whether such measures are effective and to what extent help in the matter. Keeping in view the possibility of corruption in the Directorate as pointed out by the Hon. Members I admit that whatever action has been taken by way of vigilance is insufficient and I have no hesitation in stating that the observations of the Hon. Member is correct. I further wish to inform the August Committee about the progress achieved during the current year. Not only our officers are kept under greater watch but wherever any malafide action is noticed effective and deterrent action is taken. Recently we have suspended one Deputy Director, who is a Senior Officer and retired two Assistant Directors besides reverting a Chief Enforcement Officer."

5.16 The Committee have been informed that the number of complaints received in the Directorate of Enforcement is limited and that these were not of a serious nature. Taking into account the fact that the Directorate has to enforce the various provisions of FERA and COFEPOSA which directly effect the sensitive sections of public and which offer considerable scope of misuse of powers, the Committee feel that the above statement is not a correct index of harassment which citizens have to put up with. From

the observations of Secretary, Department of Revenue, the Committee are inclined to conclude that those who bear the brunt of harrassment and corrupt practices on the part of Enforcement officials are wary of making direct compaints due to the fear of further harrassment.

In order to improve this state of affairs the Committee desire that Directorate should make a determined effort to enquire into the substance of even anonymous complaints. They feel this is essential to demonstrate the seriousness of the Directorate in tackling this situation and thus, enhancing the confidence of the public. The Committee are of the opinion that complaint Cell in the Directorate ought to have functioned more effectively. The whole system of registering and redressing of complaints therefore needs to be thoroughly overhauled. The Committee expect the Ministry would lose no time in doing the needful.

5.17 The Committee note that only 6 vigilance cases have been registered between 1.7.1987 and 30.6.1990 against the officers of the Directorate. They are further disappointed to find that only 3 cases have been disposed during this period. The Committee have also been informed that no effective measures have been taken in these vigilance cases. The Department has conceded that the action by way of vigilance has been inadequate. The Committee are not satisfied by the statement of the Secretary Revenue that watch is being kept on officers of doubtful integrity and that deterrent action has been taken in some cases. They are constrained to conclude that the existing set up of vigilance cell has not proved to be very effective.

The Committee, therefore, desire the Ministry to take suitable measures to strengthen the existing vigilance set up so that appropriate action against the corrupt officials is initiated expeditiously. They also desire that the corruption cases pending with Directorate should be dealt with seriousness and expedition.

NEW DELHI;

14 February, 1992

25 Magha, 1913 (Saka)

MANORANJAN BHAKTA

Chairman,

Estimates Committee

COMPOSITION OF THE ESTIMATES
COMMITTEE (1990-91)

CHAIRMAN

Shri Jaswant Singh

MEMBERS

2. Shri J.P. Agarwal
3. Shri Anbarasu Era
4. Shri Kamal Chaudhry
5. Shri Anantrao Deshmukh
6. Prof. Prem Kumar Dhumal
7. Shri Balvant Manvar
8. Shri Hannan Mollah
9. Shri Arvind Netam
10. Dr. Debi Prasad Pal
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12. Shri Harin Pathak
13. Shri Bhausahab Pundlik Phundkar
14. Bh. Vijaya Kumara Raju
15. Shri Mullappally Ramachandran
16. Shri Y. Ramakrishna
17. Shri Rameshwar Prasad
18. Shri J. Chokka Rao
19. Shri Chiranji Lal Sharma
20. Shri Yamuna Prasad Shastri
21. Shri Dhanraj Singh
22. Shri Subedar Prasad Singh
23. Shri Sukhendra Singh
24. Shri Tej Narain Singh
25. Shri Taslimuddin
26. Dr. Thambi Durai
27. Shri Nandu Thapa
28. Shri P.K. Thungon
- *29. Shri K.C. Tyagi
30. Shri Kailash Nath Singh Yadav.

*. Shri K.C. Tyagi has resigned from the membership of the Committee on Estimates with effect from 30th August, 1990.

Position with regard to the acceptance and implementation of the Yardi Committee recommendation concerning the Directorate of Enforcement.....

Recommendation No. 8

The joint Intelligence Committee needs to be activated for properly fulfilling the objectives for which it was set up. It should be made more broadbased by associating the Director of Enforcement with it. It should meet regularly and should be presided over personally by the Chairman of the Central Board of Excise and Custom's.

Comments

All the recommendations have been implemented.

(a) The Director Enforcement has been made a member.

(b) It is meeting on the first Tuesday of every month.

(c) It is presided by the Special Secretary to the Government.

Recommendation No. 22

At the Zonal level there is provision for an Assistant Director looking after the exclusive work of intelligence. At the Headquarters also there is a Deputy Director earmarked for this job. However, they are all overburdened by other routine duties entrusted to them in addition to their intelligence work, and in my opinion, the Deputy Director at the Headquarters and Assistant Directors, in the Zones should have no other work except those relating to intelligence. The Ministry may consider sanctioning six new posts of one Deputy Director for the Headquarters and at least five Assistant Directors for the Zones with supporting staff, office, furniture etc.

Comments

A separate wing should be created at the apex and zonal levels of the Directorate of Enforcement for collecting, collating and disseminating intelligence relating to the various aspects of foreign exchange violations, with an effective two-way feedback for detection. It has also to build up the necessary documentation systems and adopt techniques to retrieve information quickly.

Recommendation No. 24

One of the Special Director of Enforcement should be entrusted with the overall responsibility of the intelligence work of the Directorate in addition to investigation work with full accountability to the Director of Enforcement.

Comments

I think one Deputy Director at the Headquarters is sufficient, provided he is exclusively looking after the intelligence work only.

Recommendation No. 59

There is need for strengthening of the Enforcement Directorate's intelligence, investigation and prosecution units, both quantitatively and qualitatively.

Comments

Yes.

Quantitative strengthening

Intelligence

We need the following new posts with facilities of vehicles, and office staff:

(i) Deputy Director	—	1
(ii) Asstt. Director	—	5
(iii) Chief Enforcement Officers	—	24

Investigation

I think we should increase the number of Assistant Director level officers and provide each Assistant Director with 2 Chief Enforcement Officers and one Assistant Enforcement Officer each. We need additional two Assistant Directors in each Zone with 2 Chief Enforcement Officers and 3 Assistant Enforcement Officers each. In certain Sub-Zones the senior most officer is a Chief Enforcement Officer which we would like to convert into Assistant Director. The following Sub-Zones will have to be up-graded:—

1. Guwahati
2. Srinagar
3. Jaipur
4. Goa
5. Hyderabad
6. Madurai

All together the requirements will be as follows:—

	Assistant Director	Chief Enforcement Officer	Assistant Enforcement Officer
Hqrs.	3	6	3
Zones	10	20	30
Sub-Zones	6	6	6
	19	32	39

The norm for Chief Enforcement Officer and Assistant Enforcement Officers have been fixed according the C.B.I's standard.

Prosecution

Yardi Committee has in a separate recommendation suggested prosecution branch may be independently established. Prosecution can be discussed under that suggestion.

Qualitative Strengthening

Intelligence

Collection of intelligence should be structured—

The following are all new areas of intelligence we have started.

- (1) Probe into under-invoicing of exports.
- (2) Probe into bogus imports—We should examine all cases of O.G.L. imports where there is no duty payable.
- (3) Probe into all Indian Companies/Joint ventures abroad, which show losses, or nominal profits.
- (4) Probe into all FERA Companies in India which show losses or nominal profits.
- (5) Collection of information about racketeers abroad from Indian residing abroad.
- (6) Guarantee amount to be incorporated in contracts for purchase of imported equipment, for providing information to the Enforcement agencies in India.
- (7) Authority letter to be obtained from suspected Bank account holders.

Qualitative Strengthening in Investigation

- (1) Training in investigative methods (to be dealt with under the recommendation of investigation).
- (2) Providing healthy competition between officers in better investigation.
- (3) Emphasis on close supervision of Assistant Directors in investigations.
- (4) Chief Enforcement Officers, should be made investigating officers in atleast 12 important cases a year.

Qualitative Strengthening of Prosecution

To be dealt with separately under the suggestion to make it an independent wing.

Recommendation No. 60

It should be ensured that the Enforcement Directorate does not fritter away its energies in pursuing small and petty cases.

Comments

We have not been successful so far in identifying the important cases and leaving out the unimportant cases. The main difficulty in closing the investigation of unimportant cases is that normally officers are unwilling to face the risk of accusations of connivance in closing cases. An Officer normally cannot muster courage to order closing of an insignificant case for fear that in subsequent enquiries he may be accused of helping a FERA violator. There is no doubt that the recommendations is very valuable. The Enforcement Directorate should concentrate its energies on bigger violations of FERA and that is possible only if small and petty cases are ignored.

Taking both these points into consideration we are of the opinion that a Screening Committee comprising of atleast 3 officers at the Headquarters and at the Zonal level should be asked to evaluate information and take decision to close insignificant matters. Decisions can be arrived at by circulation of the cases to avoid delay. This way officers can save themselves from the accusations of connivance and we think it will be an efficient method of weeding out unimportant and petty cases.

Recommendation No. 61

Company and other major cases of investigation should be handled in special cells to be created for the purpose in the Enforcement Directorate.

Comments

Such important cases should be handled by the Chief Enforcement Officers and Assistant Directors.

Recommendation No. 62

At the headquarters of the Enforcement Directorate, one Special Director should be solely responsible for intelligence and investigation work and to guide and supervise the investigation units and Special Cells both at the apex and zonal levels.

Comments

Separate officers for intelligence has been dealt with earlier. Separate officers for investigation, is already available.

Recommendation No. 63

Government should also review its policies in regard to deputation of officers to the Enforcement Directorate.

Comments

Yes. The Customs and Income-tax Departments have not been very enthusiastic in sending officers to the Enforcement. They may be persuaded to send more names. It is suggested that State Police Officers, State PCS Officers, and Sales-Tax Officers, Officers of nationalised Banks and Officers of the R.B.I. also should be made eligible for deputation to the Enforcement Directorate so that we get a wider choice of officers.

Officers should be taken on deputation for atleast 5 years.

Officers of the Enforcement Directorate also should be sent on deputation to the Income-tax and Customs and Central Excise and C.B.I. Departments.

Recommendation No. 64

Expertise should be progressively built into the Directorate of Enforcement and adequate arrangements made for the training of officials particularly at Group 'B' level and below.

Recommendation No. 65

For training of officials of Enforcement Directorate, instead of making separate arrangements, necessary facilities may be created in the Directorate of Training (Customs and Central Excise) where a Deputy Director of Enforcement can be located for this specific purpose.

Comments

Training of Officers

We are exploring the possibility of getting our officers trained either at the Institute of Public Finance or at the Institute of Foreign Trade. There should be an officer entrusted with the work of Training of the rank of a Deputy Director. He should be also responsible for periodically publishing case studies and materials incorporating the expertise gained over the years. We are approaching the Customs Department for reconsideration of the request to provide training facility in the Customs Training Institute.

Recommendation No. 66

Vacancies at the Group 'A' level in the Enforcement Directorate should be filled by officers on deputation and by promotion in the ratio of 1:1 subject to suitable and eligible officers being available for promotion. The promotee officers of the Directorate should not be left with a feeling that higher/senior posts, including that of the Director, will not be available to them even though able and eligible promotee officers are forthcoming.

Comments

Yes. The recommendation may be accepted.

Recommendation No. 103

The Enforcement Directorate should also have a Prosecution Cell manned by a Deputy Prosecutor.

Comments

This is a very over-due step. There should be a D.L.A. at the Hqrs. exclusively looking after prosecution, while the present DLA can look after Appeals in the FERA Board. Each DLA should have two ALA3 to assist them at the Hqrs. and an Additional Legal Adviser can be over all in-charge of Legal Section at the Hqrs.

In the Zones an ALA can be in-charge of the Legal Section. He should have three Public Prosecutors under him. Therefore, the following new staff will be required for the Legal work:—

1. Additional Legal Adviser at the Hqrs.
2. DLA (Prosecution) at the Hqrs.
3. 2 ALAs at the Hqrs.
4. 15 Public Prosecutors.

Recommendation No. 141

The position regarding the need to declare foreign exchange less than U.S.\$ 1000 at the time of arrival when the passenger intends to take it out of the country later, should be made clear on the disembarkation card and the directions for incoming passengers.

Comments

This much has been implemented. I think we can improve upon this scheme in the following way:—

1. The currency declaration at the time of entry into the country should be entered on the last page of the passport. This is being done in certain countries like Sri Lanka.

2. The present system of entering the details of currency declaration in a register should be done away with. Retrieval will be easier if we can feed information into a computer.

Recommendation No. 151

If the power of review is to be exercised meaningfully under the FERA Act, the resources of the Appellate Board need to be adequately supplemented. The power of review of the original orders passed by the officers below the rank of Director/Additional Director may be suitably delegated to the Director of Enforcement. The Appellate Board and the Director of Enforcement should call for the examine *suo moto* the proceedings relating to orders passed by the Director/Additional Director and the other officers respectively.

Recommendation No. 152

Law should provide that any person aggrieved by the review order passed by the Director/Additional Director could appeal to the appellate Board.

Comments

I think the present system is working well, and should continue. However, the FERA Board may be strengthened. We may consider enhancing the powers of single member bench to Five lakhs rupees penalty because at present the double bench cases are delayed because of non-availability of dates of both the officers concerned.

Recommendation No. 167

The Enforcement Directorate should keep its independent status and character. It is, however, equally necessary that it is made accountable to a statutorily constituted body. The Director of Enforcement should report direct to the Chairman of Central Board of Excise and Customs.

Comments

The present system of the Director Enforcement reporting to the Secretary (Revenue) should continue.

The Directorate of Enforcement has a multi-departmental function. It has areas of activity relating to

1. Customs
2. Income-tax
3. R.B.I.
4. Economic Affairs
5. Export and Import
6. Industrial development, and Company affairs.
7. Govt. imports and agency commissions.
8. Bank etc.

If we 'make the Directorate a wing of the Customs and Excise, the Directorate will lose its perspective.

The Committee have also been informed that a group of officers has been entrusted with the task of examining the Yardi Committee recommendations in the present context with a view to recommending to the Government measure to take follow up action.

APPENDIX

Statement of Recommendations / Observations

Sl. No.	Para No.	Recommendations / Observations
1	2	3
1	1.23	The Committee note that the Directorate of Enforcement has been created under the Foreign Exchange Regulation Act (FERA) which, upto 1957 was being looked upon as only a transitory legal document for exchange control purposes. However, in that year both FERA as well as Directorate of Enforcement assumed a permanent footing. The FERA was revamped in 1973. At the same time the Directorate has also grown organisationally as also in terms of its responsibilities.
2	1.24	The Committee find that right from its inception in 1947 and thereafter the Directorate has been working under the administrative control of different departments / agencies of the Government. To begin with it functioned as part of Exchange Control Department in Reserve Bank of India. Thereafter it has been placed either under the Department of Economic Affairs or under Department of Revenue at different stages and for different spells. During the period (1975-77) when emergency was enforced the Directorate was placed under Cabinet Secretariat Department of Personnel. At present the Directorate depends for its manpower requirement largely on the Department of Revenue. Moreover department has to maintain an active interaction with this Department as most of the violations of FERA have crosslinkages with matters falling under one or the other organisation under Department of Revenue. On the other hand the administration of FERA, which involves determination of policy questions and amendments in the law, falls under the Department of Economic Affairs. The Committee are of the view that this policy of shifting the Directorate from one Ministry / Department to another and back is not desirable or conducive to efficiency. They are not inclined to agree with the contention that the Directorate should be placed

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		<p>under one or the other Department merely on the basis of the scale of its interaction with them. The Committee were informed that the balance of advantage seems to lie in retaining the Directorate under the administrative control of the Department of Revenue.</p> <p>The Committee do not agree with the existing arrangement. They are of the view that for the smooth functioning of the Directorate it is desirable that the administrative control of the Directorate should be with the Department of Economic Affairs which also dealt with the administration of FERA so that the deficiencies and amendments in FERA which come to the notice of the Directorate can be removed expeditiously. At the same time the Committee feel that there should be close coordination with other Departments which have a bearing upon the functioning of the Directorate. The Committee will like to be informed of the steps taken in this regard.</p>
3	1.25	<p>The Committee are distressed to find that there have been cases of misuse of powers by the officers of the Directorate of Enforcement. They were, however, informed that efforts have been made to prevent such abuse of powers. The Committee also take note of the suggestions made by the Secretary, Revenue during evidence that such sensitive assignments should be given to officers of competence and proven integrity.</p> <p>The Committee hope that suitable steps will be taken, expeditiously, by the Ministry to ensure that the powers vested in various officers of Directorate are not misused and cases of misuse dealt with expeditiously and sternly. They will also like to be informed about the steps taken in this regard.</p>
4	1.26	<p>The Committee have also examined the question of according greater independence to the Directorate of Enforcement in its functioning so as to make it more impartial and free from undue interference. In this context they realise the importance of having persons of high integrity and unimpeachable moral standards to head the</p>

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organisation. They also appreciate the sensitivity of assignment and the desirability of having an incumbent who enjoys the confidence of political authority holding forte.

While it may not be practicable to have a fixed tenure for Director of Enforcement, the Committee desire that the Government must give a serious consideration to the matter and adopt ways and means for encouraging the officers holding the post to act with utmost independence and impartiality.

5 1.27 The Committee are surprised to note that so far no review or evaluation of the functioning of the Directorate has been made by any agency, internally or externally.

6 1.28 In this regard the Committee are inclined to agree with the views expressed by Secretary, Revenue that unless the evaluators are privy to the information relating to the circumstances of specific cases it will be very difficult to judge whether a particular action, such as adjudication or arrest was justified. The Committee also note that under the provisions of the FERA, the officers of the Directorate cannot reveal such information to any body except when demanded by someone authorised under law. In absence of any such information the rationale of the evaluation itself would stand defeated. The Committee, however, do not accept the view that the only person, capable of reviewing and evaluating the functioning of Directorate would be the Secretary, Revenue. The Committee are also of the firm opinion that such an evaluation is not synonymous with day-to-day direction and supervision of the work of the Directorate which is part of the normal responsibilities of Secretary, Revenue.

The Committee, therefore, suggest that the Government may consider the desirability of providing for periodic evaluation of the Directorate, say, after every 5 years, in the FERA itself. Such an evaluation will then have the force of law and all the necessary but sensitive information can be revealed to a panel of evaluators who can be drawn from amongst the retired and serving officers of the Government possessing actual experience of having worked in various economic intelligence / enforcement agencies.

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7	2.23	<p>The Committee find that the Foreign Exchange Regulation Act, 1973 has its genesis in shortage of foreign exchange faced by many countries including India after the Second World War. Although conceived as a transitory regulation it has now acquired a permanent place on the 'Statute Book' owing to continued balance of payment problems faced by the country. The Committee also note that the developmental compulsions of Indian economy have turned the availability of foreign exchange into a very critical factor of growth. The Committee are therefore not surprised to know that successive Governments have been strengthening FERA with the result that the powers now vested with Enforcement Officers have become more comprehensive. Moreover a great deal of subjectivity has been introduced in the exercise of such powers leading to a number of complaints of harassment through alleged vexatious searches, seizures and arrests. This obviously is not conducive to the creation of a business environment which could facilitate greater investments and speedy growth. The Committee feel disconcerted by the fact that inspite of widening the scope of powers exercised by Enforcement Officers under the FERA and despite making the Act more flexible to create room for policy manoeuvring, the general perception is that of widespread violations of FERA leading to substantial sums of foreign exchange being kept outside the country. In this context, the Committee welcome the candour of Secretary, Revenue in admitting that existence of FERA notwithstanding, situation would remain unmitigated so long as distortions in our economy persist. The Committee are also informed that FERA would cease to be relevant in a situation where rupee could be a convertible currency. This, the Committee believe is only partially feasible in the immediate future. They, however, cannot overlook the fact that the existence of FERA in its present rigour can also impede the progress of economy towards the convertibility of rupee. Appreciating the above dilemma the Committee desire that while it may be prudent to retain FERA in the near future during the period of transition it ought to be modified in such a manner as will deter foreign exchange racketeers from resorting to malpractices.</p>

The Committee advise the Government to expeditiously

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amend Section 33(2) of the Act to facilitate greater and smooth flow of information from third party in situations where neither of the two parties involved in violation of FERA cooperate with the Directorate. At the same time the Committee would expect that the targets of searches, seizures and arrests are picked up with greatest care and only after substantial intelligence, is obtained against such target. The Committee also recommend that the Government should continue such economic reforms as would make flow of foreign exchange into India a profitable proposition.

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3.25

The Committee have been informed that intelligence is collected by the Directorate of Enforcement from casual and regular informers, sister organisations and foreign sources. They are surprised to note that the Directorate has no structured and separate set up for collecting, analysing and disseminating intelligence. This has been attributed to paucity of staff. The Committee are also unhappy to find that there is not even a separate officer in the Directorate to deal with intelligence exclusively. The only official dealing with such matters is doing so in addition to other responsibilities. Even the Secretary of the Ministry during evidence conceded that intelligence set up in the Directorate is "definitely inadequate and deserves to be improved." The Committee are dismayed to note that even after a lapse of more than 20 years the Government has failed in equipping the Directorate with a separate Intelligence Cell under a senior officer for an important function on which depends the effectiveness of the entire Enforcement machinery.

The Committee also wish to lay stress upon the need to have an arrangement whereby the intelligence is received, sifted, evaluated and assessed by officers who are not directly concerned with the operative part of enforcement activity. The Committee believe that this will impart greater objectivity to the functioning of the Directorate as a whole, as also minimise the possibility of Enforcement Officers frittering away their energy in following up cases which are either not genuine or where poor intelligence forecloses chances of success.

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9	3.26	<p>The Committee, therefore, are inclined to agree with the views expressed by Secretary, Revenue during evidence that the collection of intelligence as well as its evaluation and assessment are almost inseparable at the operational level. In this regard they wish to point out that as far back in 1979 the Yardi Committee had recommended the setting up of a separate wing at the apex and zonal level of the Directorate of Enforcement for collection and dissemination of intelligence. The same Committee had also recommended that the Directorate of Intelligence should be entrusted to a special Director with full accountability to the Directorate of Enforcement.</p> <p>The Committee, therefore, hope that the Government will take expeditious and effective steps to revamp the intelligence set up in the Directorate of Enforcement and, for this purpose, appoint a special officer of sufficient seniority who can exclusively look after the intelligence work. A cell with appropriate staff strength should also be established to assist him in this regard.</p>
10	3.27	<p>• The Committee also desire that the Department of Revenue should take suitable measures in improving special investigation manuals containing material on techniques of evasion of tax, smuggling and foreign exchange violations. These manuals should be supplied to Investigating Officers as already recommended by the Yardi Committee in 1979.</p>
11	3.28	<p>The Committee are also informed that there exist certain areas of intelligence which fall under the purview of other agencies involved in collection and processing of economic intelligence but are being neglected at present by such agencies.</p> <p>The Committee hope that adequate steps would now be taken to bring such matters also within the purview of a strengthened intelligence apparatus within the Directorate of Enforcement without duplicating the work of other intelligence agencies. The Committee expect that appropriate additional staff will be authorised to the Directorate for this purpose.</p>
12	3.29	<p>The Committee also note that a Central Economic Intelligence Bureau has been set-up for coordinating the investigative efforts and enforcement actions by various</p>

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		<p>agencies connected with investigations into economic offences and enforcement of economic laws. The Bureau is expected to maintain liaison with the concerned Departments and Directorates both at the central as well as State level.</p> <p>The Committee desire suitable measures be taken to ensure that this bureau is allowed to function effectively without overlapping the functions of proper intelligence cell in the Directorate of Enforcement.</p>
13	3.30	<p>The Committee are happy to note that the Directorate is in the process of evolving new methods of collecting intelligence in specified fields.</p> <p>They hope that these new methods will be expeditiously evolved and utilised for collecting information and intelligence. The Committee would like to be kept informed of the progress achieved in this regard.</p>
14	3.31	<p>It has been brought to the notice of the Committee that though RBI is the custodian of foreign exchange, their experience had been very disappointing in the matter of monitoring of export proceeds in the matter and there was an urgent need for strengthening the reporting system in the RBI. The Committee urge the Government to take necessary corrective measures in the matter urgently.</p>
15	3.54	<p>The Committee find that in recent years while the number of searches conducted have registered a marginal increase, the amount of foreign and Indian currency seized during such searches has grown manifold. This indeed is indicative of greater accuracy in planning and carrying out searches. Notwithstanding this encouraging trend the Committee are surprised to note that about one third of searches did not yield any result, obviously, for want of hard intelligence. In this context the Committee also note that Enforcement Officers conducting searches sometimes face difficulty in carrying out their duties in absence of adequate protection when the parties searched turn hostile. The Department however, does not consider arming of the Enforcement Officers a practicable proposition and consider the present practice of taking police protection to be appropriate. It has also been pointed out that while conducting searches of the premises in the absence of the owner, sufficient staff is not available to guard such</p>

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premises after the search is completed and till the arrival of the party.

The Committee while expressing satisfaction at improving searches, seizure ratio would expect the Government to take adequate steps to further improve this ratio. For this they desire that not only the intelligence be strengthened but also sufficient staff and police protection be provided to search parties.

16 3.55

The Commerce are concerned to note the lack of objectivity in conducting the searches. They have been informed that the reasonable belief of the enforcement officers is invariably the ground for searches and that such belief is formed on the subjective satisfaction of the officer concerned. While the Committee note that it is the policy of the Government to bring more objectivity in such matters they are nevertheless disturbed to find that vexatious searches have been conducted on several occasions. They find it even more disturbing that the Department is unable to vouch against such malafide actions in future. The practice of fixing targets for such searches as a measure of performance by the Enforcement Officers has been cited as one of the factors responsible for this situation.

The Committee cannot but take a serious view in the matter and urge the Government to immediately review the practice of fixing targets for searches. They also feel that in case such targets are administratively unavoidable due care should be taken to fix them at a realistic level so that officers of Enforcement Directorate in their enthusiasm to achieve targets do not harass the citizen. They would also expect the Government to ensure that such searches are taken up only after thorough evaluation of the veracity of intelligence available. Further, once the search is taken up this should be subject to close monitoring by senior officers in order to bring to light malpractice, if any and to punish the guilty officers.

17 3.56

The Committee are amazed to find that despite the fact of vexatious searches being an open secret, the Department have not come across any specific instances of this nature. The Committee have been informed that whatever few complaints have been received in this regard

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have not been of serious nature. It is, therefore, obvious that the affected parties are afraid of further harassment and do not venture to make any complaints. These revelations are also an index of fairness with which the Enforcement Directorate has functioned hitherto. The Committee, therefore, find it least surprising that affected parties have not been successfully prosecuting the Enforcement Officers for vexatious searches, even though the law provides some safeguards to them. The Committee are distressed to find that the Department could not cite even a single case where permission had been granted to the affected parties for prosecuting an officer of the Directorate for carrying vexatious searches. The Committee regret to note, that such searches are often carried out at the instance of higher authorities in the Directorate / Ministry as a result of which an ordinary citizen does not even dare to complain. It is also apparent that legal provisions do not go far in helping the citizens.

The Committee while expressing their deep concern at such state of affairs would urge the Government not only to evolve such a legal and administrative system as would make it difficult for anyone to cause or carry out searches with malafide motives but would also expect Government to amend the law in such a manner as would give the citizens adequate legal protection against such harassment.

18 3.75

As provided under FERA the Enforcement Officers exercise powers of adjudication in regard to cases of FERA violations. These powers are exercised in a quasi-judicial manner and orders passed thereafter are also subject to review by FERA Appellate Board. The Committee were informed that on an average the adjudication of cases takes about 14 months. The Committee are disconcerted to observe that between 1987 and 1989 a high proportion of the cases registered, approximating to almost 73% have been lying pending. They are shocked to find that some cases which are more than ten years old are still pending at various stages of adjudication. The Committee have also been informed that the Department is considering various suggestions to expedite adjudication cases. In this context they are also constrained to note that even after a lapse of 18 years no norms have been fixed in regard to maximum period

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within which a case has to be finalised. The Committee believe that it is essential in this regard to arrive at a rational norm in regard to the number of cases an officer can dispose of within a given period. The Committee also find that no time limit has been fixed for registration of the cases. The Committee are of the firm view that adjudication process should be time bound.

They, therefore, urge that reasonable time-limits may be fixed without further delay. They also hope that suggestions spelt out by the Department for reducing delays will be implemented forthwith. Similarly time limit may be fixed for registration of cases.

- 19 3.76 The Committee will like to advise the Directorate not to overburden its officers with large number of cases as such a practice can only result in delays in adjudication and non-observance of whatever norms may be adopted for assessing their performance. They, therefore, urge the Government to look into this aspect with due seriousness. They also desire to be informed about the steps taken in this regard.

- 20 3.77 The Committee have been informed that one of the main reasons for delay is that Show Cause Notice are being prepared on an offhand manner without incorporating specific charges and without looking into the details of evidence. This not only delays adjudication proceedings but also results in harassment to the concerned parties as they have to ask for this information again and again.

The Committee desire that specific and detailed guidelines may be issued to the concerned officers in this regard and action taken in case these are not followed.

- 21 3.78 The Committee also regret to find that as on 31st December, 1989, 1268 appeals were pending before the FERA Board and that some of these appeals pertain to the year 1977. They are further dismayed to note that the percentage of disposal of the appeals during 1987, 1988 and 1989 has been as low as 35%, 31% and 27% respectively. The Committee are, therefore, constrained to conclude that the above shortage of officers indicates a casual approach of the Government in clearing the backlog.

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22	3.79	The Committee would like the Ministry to take immediate steps so that the backlog of appeals can be cleared expeditiously.
23	3.94	The Committee note that during the period 1987 to 1989 out of 911 cases under prosecution for violation of FERA only 345 could be finalised. The balance 566 cases were pending in different courts at the end of 1989. They also note that average period for disposal of cases has been varying from place to place. The Committee are, therefore, constrained to infer that the pace of disposal of cases being prosecuted has been tardy. Consequently the pendency of such cases in courts has been increasing day by day. The Committee also find that no systematic study has ever been conducted to ascertain the reasons for this situation. In this context they were informed during evidence that the problem was attributable to general overburdening of civil courts at various levels as also be inadequate defence of such cases on the part of the Government. The Committee were further apprised that economic offenders were often able to obtain the services of the best legal professionals. As against this the Department has to be content with the services of lawyers who are poorly paid and totally ill-motivated even in cases involving substantial sums of money. It was suggested that not only special courts be set up for the purposes of prosecuting economic offenders, but also that such courts should be manned by the officials from the Directorate of Enforcement and the Departments of Customs and Central Excise and the Income-Tax subject to their having appropriate legal qualifications.
24	3.95	The Committee have no hesitation in recommending that Government should take immediate steps to set up special courts for economic offenders in consultation with the State Governments. For this purpose they also recommend that the matter may be deliberated upon in the next Conference of Chief Ministers to be convened at an early date. The Committee, however, are not convinced by the argument that such courts would become efficient by merely appointing officers drawn from the above mentioned organisations. On the contrary such a step may result in judicial improprieties.

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25	3.96	<p>The Committee are of the firm opinion that the Department should have freedom to engage lawyers of known competence without being obliged to confine their choice to a panel of lawyer of Central Government. The Committee, therefore strongly support the need of the Department to have sufficient financial powers for obtaining services of lawyers of appropriate standing in order to defend in the courts of law cases involving large sums of money. They urge the Government to examine this matter with earnestness in consultation with the Ministry of Law.</p> <p>The Committee would also like to stress upon the need for strengthening the legal set up within the Directorate of Enforcement. For this purpose they recommend creation of attractive promotion prospects in order to draw and retain officers of sound legal knowledge and experience. The Ministry may also appoint officers of sufficient experience and legal background on contract basis. The Committee would also desire the Ministry to review the present time-lag in disposal of cases at different places and take necessary remedial measures in this regard.</p>
26	3.97	<p>The Committee find that officers of the Directorate have been given very wide powers for recommending cases for detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (COFEPOSA) to prevent any person from acting in a manner prejudicial to the conservation and augmentation of foreign exchange. The Committee are of the view that the likelihood of such powers being misused cannot be ruled out defeating the very purpose for which the Act was enacted.</p> <p>The Committee therefore desire the Ministry to provide suitable safeguards to ensure that such powers are not misused and innocent persons are not harassed. The Committee would also like to be kept informed of the progress achieved in this regard.</p>
27	4.33	<p>The Committee are distressed to find that organisational aspects of the Directorate of Enforcement have received little attention hitherto, partly due to perceived impermanence of FERA in the initial years of its</p>

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		<p>formation. The Committee are inclined to think that this neglect is due to the Directorate being placed under different departments at different times.</p> <p>The Committee hope that the Government will now pay serious attention to the organisational aspects of Enforcement Directorate.</p>
28	4.34	<p>The Committee note with concern that the organisational set up of the Directorate has not grown proportionally in relation to the aims and objectives for which it was created. They were also informed by the Secretary of the Ministry during evidence that there is need for strengthening of the organisation in various areas like intelligence and vigilance etc. The Committee find that out of 802 sanctioned staff strength 78 posts including the posts of Special Director, Chief Enforcement Officer, Enforcement Officer and Asstt. Director have been lying vacant since long. This has obviously affected the functioning of the Directorate adversely. The Committee find that shortage of staff has not only resulted in arrears of work, but the quality of work has also deteriorated.</p> <p>They cannot but take a serious view of this unhappy situation. The Committee, therefore, expect the Government to fill up all vacant posts, without further delay.</p>
29	4.35	<p>The Committee note that Staff Inspection Unit had carried out in 1974 a study of manpower requirement in the Directorate. The Committee find it unfortunate that this report is not available with the Ministry and that no regular study has been carried out in this regard after 1974. They also find that at present there is no regular and systematic procedure for the assessment of staff strength of Directorate. They were, however, informed that the man power needs of the Directorate are being reassessed in the light of its current work load.</p> <p>The Committee recommend that the Ministry should take up with immediate effect, the re-assessment of staff strength of the Directorate, and equip the Directorate with adequate staff, commensurate with its current work-load.</p>
30	4.36	<p>The Committee are also of the view that there should be a regular periodical review of the manpower requirement in the Directorate to maintain the health of this organisation.</p>

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31	4.37	<p>The Committee are unhappy to note that there is still no proper arrangement for imparting training to the staff in the Deptt. Though the Directorate has been organising some training workshops the requisite benefit could not be derived owing to lack of focus in this effort. The Committee find that the Yardi Committee had recommended that the new entrants and other persons should be imparted training alongwith customs staff so as to enable them to attain efficiency in various provisions of FERA and other Economic Laws including the aspect of inspection and searches. They have also been informed that need has been felt for training the staff of the Directorate in certain related subjects such as overseas banking, accountancy and company law procedure and that a proposal in this regard is under consideration.</p>
32	4.38	<p>The Committee need hardly emphasize the paramount importance of imparting regular and indepth training in these subjects to the officers/staff of the Directorate.</p>
33	4.39	<p>The Committee, therefore, desire that not only the officers at higher level but also those at middle and lower levels should be regularly trained so as to acquaint them with relevant aspects of commercial law accounting and practices, besides the modern techniques of investigation. The Committee would expect the Ministry to continue to organise workshops at regular intervals for the purpose.</p>
34	4.40	<p>The Committee have been infomed that he number of complaints received in the Directorate of Enforcement is limited and that these were not of a serious nature. Taking into account the fact that the Directorate has to enforce the various provisions of FERA and COFEPOSA which directly effect the sensitive sections of public and which offer considerable scope of misuse of powers, the Committee feel that the above statement is not a correct index of of harassment which citizens have to put up with. From the observations of Secretary, Department of Revenue, the Committee are inclined to conclude that those who bear the brunt of harassment and corrupt practices on the part of Enforcement officials are vary making direct complaints due to the fear of further harassment.</p>

In order to improve this state of affairs the Committee

desire that Directorate should make a determined effort to enquire into the substance of even anonymous complaints. They feel this is essential to demonstrate the seriousness of the Directorate in tackling this situation and thus, enhancing the confidence of the public. The Committee are of the opinion that Complaint Cell in the Directorate ought to have functioned more effectively. The whole system of registering and redressing of complaints therefore needs to be thoroughly overhauled. The Committee expect the Ministry would lose no time in doing the needful.

35 5.17

The Committee note that only 6 vigilance cases have been registered between 1.7.1987 and 30.6.1990 against the officers of the Directorate. They are further disappointed to find that only 3 cases have been disposed during this period. The Committee have also been informed that no effective measures have been taken in these vigilance cases. The Department has conceded that the action by way of vigilance has been inadequate. The Committee are not satisfied by the statement of the Secretary Revenue that watch is being kept on officers of doubtful integrity and that deterrent action has been taken in some cases. They are constrained to conclude that the existing set up of vigilance cell has not proved to be very effective.

The Committee, therefore, desire the Ministry to take suitable measures to strengthen the existing vigilance set up so that appropriate action against the corrupt officials is initiated expeditiously. They also desire that the corruption cases pending with Directorate should be dealt with seriousness and expedition.

**LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA
SECRETARIAT PUBLICATION**

Sl. No.	Name of Agent	Sl. No.	Name of Agent
ANDHRA PRADESH		UTTAR PRADESH	
1.	M/s. Vijay Book Agency, 11-1-477. Mvlargadda, Secunderabad-500 306.	12.	Law Publishers, Sardar Patel Marg, P.B. No. 77, Allahabad, U.P.
BIHAR		WEST BENGAL	
2.	M/s. Crown Book Depot. Uppar Bazar, Ranchi (Bihar).	13.	M/s. Madimala, Buys & Sells, 123, Bow Bazar Street, Calcutta-1.
GUJARAT		DELHI	
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380 006. (T.No. 79065)	14.	M/s. Jain Book Agency, C-9, Connaught Place, New Delhi, (T.No. 351663 & 350806).
MADHYA PRADESH		15.	M/s. J.M. Jaina & Brothers, P. Box 1020, Mori Gate, Delhi-110006. (T. No. 2915064 & 230936).
4.	Modern Book House, Shiv Vilas Place, Indore City. (T.No. 35289)	16.	M/s. Oxford Book & Stationery Co., Scindia House, Connaught Place, New Delhi-110001. (T.No. 3315308 & 45896).
MAHARASHTRA		17.	M/s. Bookwell, 2/72, Sant Nirankari Colony, Kingsway Camp, Delhi-110 009. (T.No. 7112309).
5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400 002.	18.	M/s. Rajendra Book Agency, IV-DR59, Lajpat Nagar, Old Double Storey, New Delhi-110 024. (T.No. 6412362 & 6412131).
6.	The International Book Service, Deccan Gymkhana, Poona-4.	19.	M/s. Ashok Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi-110 033.
7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400 001.	20.	M/s. Venus Enterprises, B-2/85, Phase-II, Ashok Vihar, Delhi.
8.	M/s. Usha Book Depot, 'Law Book Seller and Publishers' Agents Govt. Publications, 585, Chira Bazar, Khan House, Bombay-400 002.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus, New Delhi-110 001. (T. No. 344448, 322705, 344478 & 344508).
9.	M & J Services, Publishers, Rep- resentative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor, 68, Jyotiba Fuele Road Nalgaum, Dadar, Bombay-400 014	22.	M/s. Amrit Book Co., N-21, Connaught Circus, New Delhi.
10.	Subscribers Subscription Service India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400 001.	23.	M/s. Books India Corporation Publishers, Importers & Exporters, L-27, Shastri Nagar, Delhi-110 052. (T.No. 269631 & 714465).
TAMIL NADU		24.	M/s. Sangam Book Depot, 4378/4B, Murari Lal Street, Ansari Road, Darya Ganj, New Delhi-110 002.
11.	M/s. M.M. Subscription Agencies, 14th Murali Street, (1st Floor), Mahalingapuram, Nungambakkam, Madras-600 034. (T.No. 476558)		