Bill No. 69 of 2025

THE FOREIGN EXCHANGE MANAGEMENT (AMENDMENT) BILL, 2025

By

SHRI ARVIND GANPAT SAWANT, M.P.

A

BILL

further to amend the Foreign Exchange Management Act, 1999.

BE it enacted by Parliament in the Seventy-Sixth Year of the Republic of India as follows:–

Short title and commencement.

1. (*1*) This Act may be called the Foreign Exchange Management (Amendment) Act, 2025.

(*2*) It shall come into force on such date, as the Central Government may, by notification, in the Official Gazette, appoint.

Amendment of section 36.

2. In section 36 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as the principal Act), in sub-section 3, the following proviso shall be inserted, namely:- 42 of 1999.

"Provided that the officers of the Enforcement, while exercising powers under this Act, shall ensure that such powers are exercised in a transparent, just and accountable manner, without infringing upon the rights and dignity of individuals or entities under inquiry.".

Insertion of new Chapter VI A.

3. After Chapter VI of the Principal Act, the following Chapter and sections thereunder shall be inserted, namely:-

"CHAPTER VIA

OVERSIGHT AND ACCOUNTABILITY

Establishment of the Oversight and Accountability Committee.

38A. (*1*) The Central Government shall, by notification in the Official Gazette, establish an Oversight and Accountability Committee (OAC) consisting of eminent legal experts, retired judges and senior bureaucrats, to oversee the conduct of investigations and actions taken by the Directorate of Enforcement under this Act.

(*2*) The term of OAC established under sub-section (*1*) shall be three years from the date of its establishment.

(*3*) The salary and allowances payable to, and other terms and conditions of services of legal experts, retired judges shall be such as may be prescribed.

(*4*) The OAC shall have power to regulate its procedure.

Powers and functions of OAC.

38B. (*1*) The OAC shall,–

(a) review cases and actions taken by the Directorate of Enforcement to ensure that they adhere to principles of justice, transparency and fairness; and

(b) investigate complaints related to malpractices, abuse of power, exceeding jurisdiction and similar issues by the Directorate of Enforcement.

(*2*) Without prejudice to anything contained in sub-section (*1*), the OAC shall have powers and administrative functions as prescribed by the Central Vigilance Commission, from time to time

Obligation of Directorate of Enforcement to cooperate with OAC.

38C. The Directorate of Enforcement shall cooperate with and provide necessary information to the OAC to facilitate its oversight functions.

Punishment for offences.

38D. (*1*) Any officer of the Directorate of Enforcement found guilty of abuse of power as per the provisions of this Act, shall be subject to disciplinary action and / or prosecution under the Prevention of Corruption Act, 1988 or any other relevant law for the time being in force.

(*2*) Where the OAC finds the officer of the Directorate of Enforcement guilty of exercising its powers beyond its jurisdiction or abusing its power, then in accordance with the findings of the OAC and the damage incurred to individuals or entities as a result of the actions of the officer, the Central Government shall provide compensation to address the damage relating to the individual's reputation, public image and potential future employment or occupational opportunities.

38E. (*1*) The OAC shall prepare in such format and at such time, for each financial year, as may be prescribed, its annual report giving a full account of its activities during previous financial year and submit a copy thereof to the Central Government. Annual Report.

(*2*) The Central Government shall cause the annual report prepared under sub-section (*1*) to be laid before each House of Parliament as soon as after its receipt.

Explanation.— For the purposes of this Chapter, the term "abuse of power" shall include any action or practice by the Directorate of Enforcement that contravenes the principles of justice, rule of law and transparency, with the intent of harassing, intimidating, or creating undue influence over individuals or entities.".

STATEMENT OF OBJECTS AND REASONS

The Enforcement Directorate (ED) was established in 1956 as an "Enforcement Unit" to investigate violations of the Foreign Exchange Regulation Act, 1947, under the Department of Economic Affairs. Subsequently, it was renamed the "Enforcement Directorate" and its administrative oversight shifted to the Department of Revenue in 1960. In 1973, the Act was replaced, leading to a shift to the Department of Personnel and Administrative Reforms. In 1977, it returned to the Department of Revenue. In 1999, the Foreign Exchange Management Act, 1999, replaced the earlier legislation.

After facing a balance of payments crisis in 1991-92 and experiencing a significant drop in foreign exchange reserves, policymakers aimed to revamp the regulatory framework. As India's foreign exchange reserves began to recover in 1993, driven by economic liberalization and foreign investments, discussions revolved around easing rules for overseas expenses and making the rupee convertible on the current account. Government had announced the rupee's convertibility on the current account in the 1994-95 Budget, signifying a shift in India's foreign exchange regulations. The replacement of the Foreign Exchange Regulation Act (FERA) with a new law, FEMA, was undertaken to reflect changing economic realities and promote external trade and foreign exchange market development. FEMA marked a shift from criminal offenses to civil offenses, and it introduced monetary penalties for violations. However, enforcement agencies initially resisted this transition, citing concerns about potential misuse.

Despite concerns and resistance from enforcement agencies, including the Enforcement Directorate, regarding the removal of the threat of criminal action, the Government proceeded with FEMA. This marked a shift toward a more liberalized approach to foreign exchange management, emphasizing monetary penalties as a deterrent rather than criminal prosecution.

However, the role of the Enforcement Directorate expanded significantly when the Prevention of Money Laundering Act, 2002 was introduced. This legislation granted the Directorate additional powers, designating it as an enforcement authority for an Act which considered money laundering as a criminal offense, in contrast to the civil nature of FEMA.

Notably, the existing legal framework under the FEMA does not explicitly define penalties or disciplinary actions for officers of the Enforcement Directorate in cases of the misuse of their powers.

In light of these concerns, it is essential to introduce safeguards and criteria that prevent misuse of powers and ensure that the enforcement agency operates transparently, fairly, and in accordance with principles of justice. Therefore, this Bill seeks to amend the Foreign Exchange Management Act, 1999, to establish an Oversight and Accountability Committee (OAC) to oversee the Enforcement Directorate's actions and investigations under the Act. Additionally, the Bill introduces punishment for any authority officer found guilty of abusing their power.

The aim is to bring about accountability, transparency, and fairness in the functioning of the Enforcement Directorate, and to prevent its misuse for political purposes or harassment. It is imperative that enforcement agencies operate within the boundaries of the law and uphold the principles of justice and individual rights.

Hence this Bill.

New Delhi; ARVIND GANPAT SAWANT

March 4, 2025

FINANCIAL MEMORANDUM

Clause 3 of the Bill *vide* proposed section 38A provides for establishment of the Oversight and Accountability Committee to oversee the task of reviewing the functioning of authorities under the Act. The Bill, therefore, if enacted, is likely to involve expenditure from the Consolidated Fund of India. However, at this point, it is not possible to assess the expenditure of either recurring or non-recurring nature which is likely to be incurred.

ANNEXURE

[EXTRACTS FROM THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999]

[ACT NO. 42 OF 1999]

*   *   *   *   *

CHAPTER VI

DIRECTORATE OF ENFORCEMENT

Directorate of Enforcement.

36. (*1*) *   *   *   *

(*2*) *   *   *   *

(*3*) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

LOK SABHA

A

BILL

further to amend the Foreign Exchange Management Act, 1999

(*Shri Arvind Ganpat Sawant*, *MP*)