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Foreign Exchange Management Act (FEMA)

*This article covers "Daily current events "and the topic is about '*Foreign Exchange Management Act (FEMA)*' which is in news, it covers "*Economics*" In GS-3; the following content has relevance for UPSC.*

For Prelims: Foreign Exchange Management Act (FEMA)
For Mains: GS-3, Economics

Why in news:
The Enforcement Directorate (ED) has registered a case against the British Broadcasting Corporation (BBC) India under the Foreign Exchange Management Act (FEMA) for alleged foreign exchange violation.

About Foreign Exchange Management Act (FEMA):

- The Foreign Exchange Management Act (FEMA) is a law enacted by the Government of India in 1999 to consolidate and amend the laws relating to foreign exchange transactions, external trade, and payments in India. FEMA replaced the Foreign Exchange Regulation Act (FERA) that was enacted in 1973.
- FEMA aims to regulate and manage foreign exchange transactions in India and facilitate external trade and payments. It provides guidelines and regulations for various types of foreign exchange transactions, such as those related to current account transactions (such as trade in goods and services, remittances, etc.) and capital account transactions (such as foreign investments, borrowing, lending, etc.). FEMA also governs the acquisition, holding, transfer, and disposal of immovable properties by non-residents in India.
- Under FEMA, the Reserve Bank of India (RBI) is the primary regulatory authority responsible for administering and enforcing the foreign exchange regulations in India. FEMA empowers the RBI to issue regulations, notifications, and guidelines to regulate foreign exchange transactions, and violators can face penalties, fines, and even imprisonment for non-compliance.
- FEMA has been periodically amended to reflect changing economic and financial conditions in India, and it plays a crucial role in regulating and managing India's foreign exchange transactions and external trade. It is essential for individuals, businesses, and entities involved in foreign exchange transactions in India to be aware of and comply with the provisions of FEMA to avoid any legal or financial repercussions.

The objectives of the Foreign Exchange Management Act (FEMA) are as follows:

- **Regulation of Foreign Exchange Transactions:** FEMA aims to regulate and manage foreign exchange transactions in India. It provides a legal framework for the conduct of various types of foreign exchange transactions, including current account transactions (such as trade in goods and services, remittances, etc.) and capital account transactions (such as foreign investments, borrowing, lending, etc.).
- **Facilitation of External Trade and Payments:** FEMA aims to facilitate external trade and payments by providing guidelines and regulations for smooth conduct of cross-border transactions. It promotes and regulates the flow of foreign exchange in and out of India, ensuring that trade and payments with foreign countries are carried out efficiently and in compliance with the regulations.
- **Preservation and Management of Foreign Exchange Reserves:** FEMA aims to safeguard and manage India's foreign exchange reserves, which are critical for maintaining stability in the external value of the Indian rupee and for meeting the country's international payment obligations. FEMA empowers the Reserve Bank of India (RBI) to manage and regulate foreign exchange transactions to ensure the efficient utilization of foreign exchange reserves.
- **Promotion of Foreign Investments:** FEMA aims to promote and regulate foreign investments in India, including foreign direct investments (FDI) and portfolio investments. It provides guidelines and regulations for foreign investors to invest in India and repatriate their investments, subject to certain conditions and restrictions as specified under FEMA.
- **Enforcement of Foreign Exchange Regulations:** FEMA empowers the RBI and other authorized entities to enforce the foreign exchange regulations in India. It provides legal provisions for penalties, fines, and even imprisonment for non-compliance with the regulations, with the objective of ensuring compliance and maintaining discipline in foreign exchange transactions.
- **Simplification and Rationalization of Foreign Exchange Regulations:** FEMA aims to simplify and rationalize the foreign exchange regulations in India to make them more transparent, efficient, and conducive to economic growth. It provides a modern legal framework for foreign exchange transactions that is aligned with the changing economic and financial landscape and promotes ease of doing business in India.

The Foreign Exchange Management Act (FEMA) applies to the following entities and transactions in India:

- **Residents and Non-Residents:** FEMA applies to both residents and non-residents of India. Residents are individuals, companies, partnerships, or any other entities that are either incorporated or registered in India, or whose control and management are situated entirely in India. Non-residents are individuals, companies, partnerships, or any other entities that are not residents of India.
- **Foreign Exchange Transactions:** FEMA applies to all transactions involving foreign exchange, which includes currency, drafts, travelers' cheques, letters of credit, bills of exchange, promissory notes, and other similar instruments. It covers a wide range of transactions, including those related to current account transactions (such as trade in goods and services, remittances, etc.) and capital account transactions (such as foreign investments, borrowing, lending, etc.).
- **Authorized Persons:** FEMA applies to authorized persons, who are individuals, banks, financial institutions, or other entities authorized by the Reserve Bank of India (RBI) to deal in

foreign exchange or carry out transactions under FEMA. Authorized persons are responsible for ensuring compliance with the provisions of FEMA while conducting foreign exchange transactions.

- **Indian Entities with Foreign Investments:** FEMA applies to Indian entities that have received foreign investments, either in the form of foreign direct investment (FDI) or portfolio investment. It governs the reporting, repatriation, and compliance requirements for such investments, and imposes certain conditions and restrictions on their utilization.
- **Non-Residents Holding Immovable Properties:** FEMA applies to non-residents of India who acquire, hold, transfer, or dispose of immovable properties in India. It governs the regulations related to acquisition, holding, and transfer of immovable properties by non-residents, and imposes certain conditions and restrictions on such transactions.
- **Exporters and Importers:** FEMA applies to exporters and importers in India who engage in international trade and transactions involving foreign exchange. It governs the regulations related to export and import of goods and services, remittances, and other international trade transactions.

Difference between FERA and FEMA:

S.No	**Foreign Exchange Regulation Act (FERA)**	**Foreign Exchange Management Act (FEMA)**
1.	The Indian Parliament established the Foreign Exchange Regulation Act in 1973.	The Indian Parliament established the Foreign Exchange Management Act (FEMA), which superseded FERA, in 1999.
2.	FERA was designed with the idea that foreign exchange is a limited resource.	When FEMA was established, the concept of foreign exchange as an asset was already in place.
3.	The primary purpose of FERA was to save foreign exchange.	FEMA's main goal is to manage foreign exchange.
4.	The phrase "authorised person" had a narrow meaning.	The phrase "authorised person" was broadened.
5.	The concept of "authorised persons" excluded banking units.	Banking units were eliminated under the definition of "authorised person."
6.	FERA rules had to be respected at all times, and any infractions were subject to legal consequences.	If FEMA regulations are violated, a civil offence is committed.
7.	A FERA violation suspect was not represented by counsel.	Anyone accused of violating a FEMA rule will be offered legal representation.
8.	As there was no provision for a Tribunal, the appeals were	There is a Special Director (Appeals) and a Special Tribunal.

	presented to the High Courts.	
9.	Individuals who violated the FERA criteria faced direct punishment.	Those found guilty of violating FEMA regulations must pay a fee that begins on the day they are convicted. If the fine is not paid within 90 days, the offender will be imprisoned.
10.	Before any funds may be moved for overseas operations, the Reserve Bank of India (RBI) must first give its approval.	There is no need for prior Reserve Bank of India (RBI) approval for overseas business and remittances.
11.	The budget did not include IT.	IT support is provided.

Conclusion:

The FERA was drafted to regulate and restrict forex trading in order to avoid abuse and safeguard foreign reserves. FEMA was established to manage currency trade and to undertake economic liberalisation measures. The adoption of FEMA signified a significant shift in Indian government policy from the rigidity of FERA to the flexibility of FEMA.

Source:
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