

Enforcement Directorate (ED) - Can it File Writ Petitions Before Courts

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Enforcement Directorate (ED) Latest News

- Recently, the Supreme Court agreed to examine a significant constitutional question: Does the Enforcement Directorate (ED) have the locus standi to file writ petitions under **Article 226** of the Constitution?
- The issue arises from a long-running legal battle between the Union agency (ED) and State governments (Kerala and Tamil Nadu), with implications for Centre-State relations, federal balance, and the autonomy of investigative agencies.

Background of the Case

- The controversy originates from the Kerala gold smuggling case (2020) involving diplomatic baggage from the UAE at Thiruvananthapuram airport.
- The ED registered a case under the Foreign Exchange Management Act (**FEMA**), 1999, and the Prevention of Money Laundering Act (**PMLA**), 2002.
- Allegations surfaced against senior Kerala officials, including the then CM. The ED approached the Kerala High Court seeking a writ of mandamus to access records, and a writ of certiorari to quash a State

notification citing lack of jurisdiction.

What are Writ Petitions?

- **Meaning:**

- A writ petition is a formal request to a higher court (like Supreme Court under **Article 32** of the Indian Constitution or High Courts under **Article 226**) for a court order (a “writ”) to enforce fundamental rights or correct legal wrongs.
- It provides an **urgent remedy** when standard legal avenues fail, typically compelling public authorities or lower courts to act lawfully or cease unlawful actions.

- **Specific directives under writ petition:**

- **Habeas Corpus** (release from unlawful detention),
- **Mandamus** (commanding duty),
- **Prohibition** (stopping excess jurisdiction),
- **Certiorari** (quashing decisions), or
- **Quo Warranto** (challenging public office holding).

- **Exemptions:**

- Under **Article 361** of the Constitution, a writ of mandamus cannot be issued against the President or the Governor of a State with respect to the exercise and performance of the powers and duties of their office.
- A writ also does not ordinarily lie against **private** individuals or bodies, except in cases where the state is alleged to have acted in collusion with a private party in violation of constitutional or statutory provisions.

Core Constitutional Question

- **Can the ED invoke writ jurisdiction under Article 226?**

- **Article 226** empowers High Courts to issue writs for enforcement of fundamental rights and “any other purpose”.
- Traditionally, it’s being used by citizens, juristic persons, and bodies with enforceable legal rights.
- The dispute is whether the ED qualifies as such an entity.

- **High Courts’ stand (Kerala & Madras HC):**

- Kerala HC (2021) and later the Madras HC held that the ED is a **statutory** body with independent powers, and its officers exercise quasi-judicial authority.
- Therefore, the ED cannot be treated as a mere department of the Union. It has statutory capacity to approach courts.

Arguments by Kerala and Tamil Nadu Governments (Before Supreme Court)

- The ED is not a juristic person, and is merely a **department** of the Union Government. Neither FEMA nor PMLA explicitly grant ED the power to sue.

- Allowing ED to file writs undermines **Article 131** (exclusive original jurisdiction of the Supreme Court in Centre-State disputes), and allows the Centre to bypass constitutional safeguards.
- The Kerala government objected to the HC's characterisation of its challenge to the maintainability of ED's writ petition as a '**trivial defect**'.
- It pointed out that the SC in the State of Andhra Pradesh vs Union of India (2012), and the Chief Conservator of Forests v. Collector (2003), held that only juristic persons can sue the governments.

Union Government or ED's Defence

- Writ petitions were filed by the Deputy Director (ED) in official capacity.
- ED officers are not mere civil servants, they are statutorily empowered (under the PMLA and FEMA) to function as independent authority.
- Hence, denying writ access would hamper effective enforcement, and create procedural roadblocks.

Supreme Court's Observations

- The issue (Whether ED can invoke Article 226) is **substantial**, not merely technical, and involves an important constitutional question of federal importance.
- Hence, the matter has been referred for detailed hearing.

Challenges and Possible Implications

- **Challenges:**
 - Blurring of federal boundaries between Centre and States.
 - Expansion of ED's powers without explicit legislative backing.
 - Risk of executive overreach through constitutional remedies.
 - Potential dilution of Article 131's exclusivity.
- **Possible implications:**
 - If ED is allowed to file writs it may be placed on par with constitutional/statutory bodies like RBI, and enhances central investigative dominance.
 - If disallowed, Centre-State disputes may be confined strictly to Article 131, resulting in greater protection of State autonomy.

Way Forward

- **Legislative clarity:** In FEMA/PMLA on ED's legal personality.
- **Judicially evolved clear standards:** On locus standi of Union agencies.
- **Reinforce:** Cooperative federalism.
- **Ensuring investigative efficiency:** Without constitutional overreach.

Conclusion

- The Supreme Court's decision will have far-reaching consequences for the scope of writ jurisdiction, and the institutional status of central investigative agencies.
- This case is not merely about procedure, but about constitutional discipline, federalism, and limits on executive power.

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