

**GOVERNMENT OF INDIA
FINANCE
LOK SABHA**

STARRED QUESTION NO:224
ANSWERED ON:04.12.2009
VIOLATION OF FOREIGN EXCHANGE LAWS
Dubey Shri Nishikant

Will the Minister of FINANCE be pleased to state:

- (a) whether cases involving violation of the Foreign Exchange Management Act, 1999 (FEMA) have increased in the recent past;
- (b) if so, the details thereof and the reasons therefor;
- (c) the details of cases of FEMA violation registered, prosecution launched conviction proceedings initiated during the last three years, year-wise alongwith the status of such proceedings as on date;
- (d) the details of the cases pending under FEMA and also of the erstwhile Foreign Exchange Regulation Act, 1973 (FERA) as on date and the reasons for the pendency; and
- (e) the concrete steps taken or being taken in this regard?

Answer

MINISTER OF THE STATE IN THE MINISTRY OF FINANCE (SHRI PRANAB MUKHERJEE)

(a) to (e) : A statement is laid on the Table of the House.

Statement referred to in parts (a) to (e) of the Lok Sabha Starred Question No. 224 for answer on 04.12.2009 regarding `Violation of Foreign Exchange Laws`

(a) to (c): The number of cases of adjudication proceedings initiated by the Directorate of Enforcement under Foreign Exchange Management Act,1999 (FEMA) has gone up in the recent past, as can be seen from the following:

No. of cases in which adjudication proceedings were initiated under FEMA:

2007-08 2008-09 2009-10 (up till 31.10.09)

269 380 297

There has also been an increase in the number of adjudication proceedings (underFEMA) which have been completed.

No. of cases in which adjudication proceedings were completed under FEMA

2007-08 2008-09 2009-10 (up till 31.10.09)

214 233 223

Since FEMA is a civil law, no prosecution is launched under FEMA.

(d): The number of cases of adjudication proceedings that were/are pending under FEMA is as follows:

No. of cases in which adjudication proceedings were/are pending under FEMA

2007-08 2008-09 2009-10 (up till 31.10.09)

After Foreign Exchange Regulation Act, 1973 (FERA) has been repealed in 2000, no new FERA cases are initiated after the cut off date of 31.05.2002. Only the cases prior to that are pursued and disposed of. The details are as follows:

FERA Cases

No. of cases in which adjudication proceedings under FERA were completed

2007-08 2008-09 2009-10 (up till 31.10.09)

182 160 1127

No. of cases in which adjudication proceedings under FERA are pending

2007-08 2008-09 2009-10 (uptill 31.10.09)

3760 3740 2661

The number of cases pending prosecution under FERA as on 31.10.2009 is as follows:

Prosecution cases under FERA

Prosecution u/s 56	Prosecution u/s 57	Total
of FERA, 1973 -	of FERA, 1973 -	
for substantive	for non- payment	
offences	of penalties	

1783 2300 4083

As regards reasons for pendency, it may be mentioned that whenever any case of suspected contravention of the provisions of Foreign Exchange Management Act, 1999 (FEMA) comes to the notice of the Directorate, the information/intelligence received is subjected to initial process of verification. In those cases, where there is material for further action, formal investigations are taken up. During the course of these investigations, the officers of the Directorate collect relevant evidence, through various processes including conduct of searches and seizure of relevant material, examination of the concerned persons and recording of their statements under FEMA. The evidence so collected is thereafter analyzed and based on the sufficiency thereof, Show Cause Notice is issued to the concerned party. This is followed by the quasi judicial process of adjudication proceedings, in such cases where the Noticee fails to show sufficient cause as to his bona-fides. Being a Civil Law, FEMA does not have any provisions for launching prosecution or for obtaining conviction in respect of the offenders.

Under FERA, besides adjudication, the offenders were also liable for prosecution for the substantive offence, u/s 56, and in those cases where penalties imposed consequent to adjudication proceedings remained unpaid, the concerned individuals were liable for prosecution for non realization of penalties u/s 57 of the Act.

In the adjudication proceedings, which are quasi judicial in nature, as also in criminal prosecution, the concerned Authority/Court has to ensure compliance of the principles of natural justice, before arriving at any conclusion with regard to commission of the offence. FERA and FEMA both have been Special Laws. Cases under these laws involve complex and intricate legal issues and processes. In most of these cases, there are quite a number of Noticees/ Accused, who usually adopt dilatory tactics, resultant to which the proceedings get prolonged.

(e) In spite of all the procedural and administrative hurdles, all out efforts are being made for expeditious disposal of pending FERA and FEMA cases. The Directorate of Enforcement could complete adjudication proceedings in as many as 670 FEMA cases & 1469 FERA cases from 2006-07 onwards. In the same period trial was concluded in 325 cases. Sustained efforts are being made to minimize the pendency of cases under adjudication.