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Evaluation of the Foreign Exchange Management Act

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Abstract
A unique opportunity for academics to examine the faults of the federal government has arisen on the 200th anniversary of the 1819 Supreme Court decision McCulloch v. Maryland. FEMA's shortcomings in "Puerto Rico during and after Hurricane Maria brought attention to flaws in the Robert T. Stafford Disaster Relief and Emergency Assistance Act. For a legislation to be upheld as constitutional under McCulloch's interpretation of Article I, Section 8, the law must be necessary and appropriate for the government to carry out its enumerated functions. Even a well-drafted law passed by Congress for the betterment of the general welfare may be necessary, but not rise to the level of proper, as demonstrated by the stark contrast between the massive funding allocated for disaster relief under the Stafford Act and FEMA's catastrophic failure to provide meaningful aid to vulnerable populations in Puerto Rico in the Fall of 2017. McCulloch's insistence that laws adhere to the letter and spirit of the Constitution and anti-subordination interpretations of the Fifth and Fourteenth Amendments, which call for equal protection to be pursued in light of the lived experience of vulnerable and minority populations, meaningfully inform the standard of propriety at play here.

Key word: FEMA, regulation, provision

INTRODUCTION

In order to facilitate external commerce and payments and for fostering the orderly growth and maintenance of foreign exchange market in India, the Indian Parliament passed the Foreign Exchange Management Act, 1999 (FEMA) in 1999. It was enacted during the 1999 parliamentary session, and it superseded the Foreign Exchange Regulation Act (FERA). Crimes involving foreign currency are now considered civil charges according to this law. It covers the entire country and is intended to replace FERA, which the government of India found to be at odds with its pro-liberalization stance. It allowed for a new system of managing foreign exchange that is in line with the WTO's developing framework (WTO). As of July 1, 2005, it also allowed for the implementation of the Prevention of Money Laundering Act, 2002.

The Foreign Exchange Regulation Act (FERA) of 1973 (the precursor to FEMA) was unique in that everything was illegal unless expressly allowed. Therefore, the Act's tenor and tone were quite severe. All offenders, no matter how slight, were sentenced to jail time. An individual was deemed guilty under FERA unless proven innocent, but this is the opposite of the presumption of innocence under other laws. Foreign Exchange Management Act (FEMA) is a regulatory structure that allows the Reserve Bank of India to establish regulations and the Central Government to pass rules pertaining to foreign exchange in line with India's Foreign Trade policy.

History:

Foreign Exchange Regulation Act

Indian law created in 1973 called the Foreign Exchange Regulation Act (FERA) put stringent rules on certain types of payments, dealings in forex and securities, and activities that had an indirect influence on the value of the rupee or other foreign currency. The legislation was meant to control currency and payments. On January 1, 1974, FERA officially became law. As foreign exchange (Forex) is a precious commodity, FERA was used when the country's reserves were low. Accordingly, FERA operated under

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the assumption that all foreign exchange generated by Indian residents legally belonged to the Government of India and hence had to be collected and returned to the Reserve Bank of India (RBI). All business dealings not authorised by RBI were deemed illegal by FERA.

When a new government in India demanded that Coca-Cola reveal its secret formula and decrease its investment in its Indian operation in accordance with the Foreign Exchange Regulation Act in 1977, the corporation decided to leave the country (FERA). Following the implementation of India's Liberalization policy in 1993, the firm (along with PepsiCo) relocated back to the country.

Switch from FERA

Restricting things like the growth of MNCs was one goal of FERA that it ultimately failed to achieve. The favours extended to FERA between 1991 and 1993 demonstrated that the agency was soon to be obsolete. In 1993, the Federal Emergency Management Act (FEMA) was established as a result of changes to the FERA. This action was taken to ease India's monetary policy toward foreign currency. In 1998, under Atal Bihari Vajpayee's leadership, the government liberalised foreign exchange regulations and limits on foreign investment by repealing FERA and replacing it with the Foreign Exchange Management Act.

Businesses, individuals, and governments all participate in the purchasing and selling of foreign currency and other debt instruments on the foreign exchange market. This market is not just the largest and most liquid in the world, but also in India, where competition is fierce. It's always evolving, and that might provide opportunities or threats for different nations. If we want to limit our exposure to harm, we need to employ strategies for dealing with the foreign currency market. The foreign exchange market of a country can expand, and central banks will strive toward that end by facilitating smoother trades. The Global Currency Exchange The requirement for foreign currency management persists whether FERA or FEMA is in charge. For Export Promotion and Substitution of Imports to be Successful, it is Essential to Maintain Sufficient Foreign Currency Reserves. With the passage of FEMA, the Reserve Bank of India (RBI) was no longer obliged to approve transactions involving the current account for foreign commerce. Instead of being controlled, foreign exchange transactions were to be managed. The transition to FEMA reflects a shift in government priorities for the nation's capital.

Main Features:

- Financial transactions involving payments to or receives from individuals or entities located outside of India, as well as transactions involving foreign currency and foreign securities, are prohibited. Restrictions can be enacted by the federal government thanks to FEMA.
- Foreign exchange, foreign security, and payments from outside India to India are restricted unless granted general or special authority by the MA, and even then, only via an authorised person.
- The Central Government may place limitations on authorised individuals' ability to engage in foreign exchange transactions under the current account in the name of protecting the public interest.
- The RBI is allowed by this Act to impose certain limits on capital account transactions, even where such transactions include an authorised person selling or drawing foreign exchange.
- Foreign cash, foreign securities, and foreign real estate owned or held by a resident of India shall be considered to have been obtained while the resident was outside of India, or through the resident's inheritance from a non-resident.

Regulations/Rules under FEMA:

- Foreign Exchange Management (Current Account Transactions) Rule, 2000

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- Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000
- Foreign Exchange Management (Transfer or Issue of any Foreign Security) regulations, 2004
- Foreign Exchange Management (Foreign currency accounts by a person resident in India)Regulations, 2000
- Foreign Exchange Management (Acquisition and transfer of immovable property in India) regulations, 2000
- Foreign Exchange Management (Establishment in India of branch or office or other place of business) regulations, 2000
- Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000
- Foreign Exchange Management (Export of Goods and Services) regulations, 2000
- Foreign Exchange Management (Realisation, repatriation and surrender of Foreign Exchange)regulations, 2000
- Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000
- Foreign Exchange (Adjudication Procedure and Appeals) rules,

Objectives of FEMA:

FEMA's primary goal was to improve the efficiency of India's international payments and trade. The legislation was also intended to facilitate the growth and stability of India's forex market in a regulated manner." All aspects of conducting business in foreign exchange within India are spelled out in detail. These deals fall into two primary categories: current and capital accounts.

The Foreign Exchange Management Act (FEMA) applies nationwide and was created to make better use of India's foreign currency reserves. It also applies to any offices or agencies that are technically located outside of India but are controlled by, or owned by, an Indian national. Enforcement Directorate is the name of FEMA's main headquarters in the middle of Delhi.

Review of literature

(RBI, Foreign Exchange Department 2017) studied "Foreign Exchange Department" discovered, and All Regional Offices (apart from Kochi and Panaji) have the authority to compound the aforementioned violations without a maximum allowed amount. Those violations that don't exceed one hundred lakh (Rs.1,00,00,000/-) can be compounded by the regional offices in Kochi and Panaji. Cell for Effective Implementation of FEMA (CEFA), Mumbai will continue to compound FEMA violations exceeding one hundred lakh (Rs.1,00,00,000/-) within the jurisdiction of Panaji and Kochi Regional Offices and all other FEMA violations, as has been the case up to this point. Concerned entities may file compounding petitions pertaining to the aforementioned violations to the relevant Regional Offices. As before, petitions for all other violations can still be sent to CEFA's Foreign Exchange Department at the Amar Building's 5th floor.

(Exchange and Act 1999) studied "foreign exchange management act 1999" I did some research and discovered that in 1973 the Indian Parliament established a law called the Foreign Exchange Regulation Act (FERA), which formally went into force on January 1, 1974. In order to protect India's foreign exchange reserves and put them to good use for the country's economic growth, the government passed the Foreign Exchange Regulation Act (FERA) in order to control the trading of foreign currency and foreign securities. It covered the entirety of India and was binding on all Indian nationals wherever they might be, in India or abroad, as well as any overseas offices of Indian corporations. Foreign Exchange Regulatory Act (FERA) governed the importing and exporting of cash. Contrary to the general rule of other laws that anything goes, FERA expressly forbids everything except what is allowed. Therefore, the Act's tenor and tone were quite severe. It made prison time available for even the smallest of

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infractions. A person was assumed guilty unless proven innocent under this legislation, but this is not the case under other statutes. Therefore, caution and compliance with all laws were prerequisites for engaging in foreign exchange transactions.

(ABADIE, ANGRIST, and IMBENS 1999) studied "the foreign exchange management act, 1999" found that and service means service of any description which is made available to potential users, such as banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transportation, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement, or the purveying of news or other information, but does not include the rendering of any service free of charge.

(Central 2013) studied "G Padmanabhan: Administering FEMA (Foreign Exchange Management Act) – evolving challenges" discovered, and It is a pleasure to have you here in the ancient city of Agra. At these yearly get-togethers, participants often reflect on the previous year's progress in FX management and talk about the background and substance of any potential future improvements. Since our last meeting in December 2012, much has changed in the world, but with the help of sound policy decisions, we have managed to keep our heads above water. As FEMA enters its adolescent years, I'd like to take a moment to reflect on the agency's development since its birth at the turn of the millennium. Allow me to begin with some inquisitive inquiries. Have we been able to stay on the route we plotted out in 1999 when we instituted Foreign Exchange Management? Is this the world we pictured for ourselves? Which way do we go from here? In an effort to reflect on the issues at hand, rather than pass judgement, please read my responses to these questions in that light.

Conclusion:

According to Section 3 of FEMA, all transactions involving current accounts are without charge; nevertheless, the central government is authorised to impose reasonable instructions at any time by enacting special rules. According to Section 6 of the FEMA, Capital Account Transactions can only be carried out within the parameters outlined by the RBI in the regulations that it has established. However, RBI cannot directly handle foreign exchange transactions and must instead authorise a person to deal with it as per the directions set by RBI. Section 10 of FEMA stipulates that RBI has a controlling role in the management of FEMA; however, RBI cannot directly handle foreign exchange transactions. In addition, FEMA has procedures for a variety of enforcement, sanctions, adjudication, and appeals in this particular area.

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