

# Foreign Exchange Violations as Economic Crimes: A Critical Study of Enforcement and Regulatory Gaps in FEMA 1999

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**Abstract**—Foreign exchange violations under the Foreign Exchange Management Act (FEMA), 1999, represent a critical enforcement challenge in India's economic crime prevention framework. This research examines structural enforcement gaps that enable violations to evade criminal accountability despite substantial investigative activity by the Directorate of Enforcement (ED). Through analysis of enforcement statistics from FY 2014-15 to FY 2021-22, appellate jurisprudence, and case studies of high-profile violations, this paper demonstrates that while the ED generated Rs. 6,376.51 crore in penalties and seized Rs. 7,066 crores in assets, the criminal conviction rate remained at 0.5% vastly below the 92% PMLA conviction rate during the same period. The paper analyzes the dual nature of FEMA violations (civil penalties and criminal prosecution), jurisdictional overlaps between FEMA, PMLA, and Bharatiya Nyaya Sanhita (BNS) 2023 frameworks, and predicate criminal conduct prosecutable under BNS provisions (Sections 318, 319, 336, 61(2), and 316). Through examination of regulatory gaps, definitional ambiguities, inter-agency coordination failures, procedural constraints, and technological inadequacies the paper identifies mechanisms enabling sophisticated foreign exchange crimes including round-tripping schemes, hawala transactions, and unauthorized forex trading platforms to escape criminal accountability. The research concludes that meaningful enforcement enhancement requires: statutory clarification of key concepts, consolidated inter-agency coordination frameworks, expansion of criminal prosecution mechanisms, and investment in technology-enabled detection systems.

**Index Terms**—Criminal liability, Economic Crimes, Foreign Exchange Violations, FEMA 1999, Money Laundering, Proportionality Doctrine, Regulatory Enforcement.

## I. INTRODUCTION:

The regulation of foreign exchange transactions constitutes a foundational element of modern monetary governance, serving dual objectives: facilitating legitimate international commerce while preventing illicit capital flows, tax evasion, and terrorist financing. India's foreign exchange regulatory framework underwent a paradigmatic shift from the Foreign Exchange Regulation Act (FERA), 1973 which treated violations as criminal offences with imprisonment sentences extending to ten years to the Foreign Exchange Management Act (FEMA), 1999, which adopted a liberalizing approach reclassifying most contraventions as civil matters subject to administrative adjudication and penalties. This transition reflected broader economic liberalization policies, yet created an enforcement paradox: while administrative penalties increased dramatically, criminal accountability declined substantially. The Directorate of Enforcement's 2025 investigation into the OctaFX platform uncovering Rs. 800 crore in alleged fraudulent forex trading within nine months through shell companies, fake documentation, and fraudulent KYC processes exemplifies the scale and sophistication of contemporary foreign exchange crimes. These schemes frequently involve predicate criminal conduct under the Bharatiya Nyaya Sanhita (BNS), 2023, including Section 318 (cheating), Section 319 (cheating by personation), Section 336 (forgery), Section 61(2) (criminal conspiracy), and Section 316 (criminal breach of trust).

Despite intensified ED enforcement from FY 2014-15 to FY 2021-22 generating Rs. 6,376.51 crore in penalties, seizing Rs. 7,066 crore in assets, and investigating 22,330 cases the criminal conviction rate for FEMA violations remains at 0.5%, a stark contrast to the 92% conviction rate in PMLA cases during the same period. By March 2022, while 992 FEMA prosecution complaints had been filed, criminal convictions numbered fewer than 50, yielding a conviction rate below 5%. This enforcement-conviction gap reveals that civil adjudication mechanisms, despite generating substantial administrative penalties, fail to translate into proportionate criminal accountability or behavioral deterrence.

The central research question addressed in this paper is: What regulatory gaps and institutional failures within FEMA's enforcement architecture enable foreign exchange violations to evade criminal accountability?

## II. HISTORICAL EVOLUTION: FROM FERA TO FEMA

### 2.1 THE FERA ERA: CRIMINAL PENALTIES AND RESTRICTIVE CAPITAL CONTROLS

The Foreign Exchange Regulation Act, 1973, established India's first comprehensive foreign exchange regulatory regime following currency stabilization after the 1973 oil crisis and subsequent balance of payments pressures. FERA treated foreign exchange violations as criminal offences, imposing imprisonment sentences extending up to ten years alongside monetary fines for substantial violations. FERA's criminal enforcement framework manifested through police-led investigations and prosecution in regular criminal courts. Between 1974 and 1998, FERA prosecutions generated approximately 8,000 criminal cases with conviction rates ranging between 40-50% across jurisdictions. These early prosecutions employed criminal provisions equivalent to modern BNS Sections 318-319 for cheating, Section 336 for forgery, and Section 61(2) for conspiracy.

### 2.2 THE FEMA 1999 TRANSITION: LIBERALIZATION AND ADMINISTRATIVE RECLASSIFICATION

The Foreign Exchange Management Act, 1999, represented a fundamental philosophical reorientation

toward foreign exchange regulation. FEMA reclassified most foreign exchange violations from criminal offences to civil contraventions subject to administrative adjudication. The statutory framework retained criminal prosecution for exceptional categories of violations specifically, unauthorized holdings of foreign assets or securities exceeding prescribed thresholds under Section 4 but restricted such prosecution to circumstances where an Assistant Director ranked ED officer filed written complaints.

However, the connection to predicate criminal offences under BNS remains crucial. Where FEMA violations involve conduct constituting:

- Section 318 BNS (cheating through fraudulent representations)
- Section 336 BNS (forgery in documentation)
- Section 61(2) BNS (conspiracy to circumvent FEMA restrictions)
- Section 319 BNS (cheating by personation in transactions)
- Section 316 BNS (criminal breach of trust)

### 2.3 STRUCTURAL OBJECTIVES AND REGULATORY MANDATE

External trade and payments, regulating foreign investment in India and Indian investment abroad, regulating forex market development, and maintaining national security interests through controlled foreign exchange flows. Within this framework, the ED functions as the principal enforcement authority, investigating suspected violations, conducting adjudications, issuing penalties, and coordinating with law enforcement for BNS offence investigations under the criminal provisions of the Bharatiya Nyaya Sanhita, 2023.

## III. THE DUAL NATURE OF FEMA VIOLATIONS: CIVIL PENALTIES AND CRIMINAL PROSECUTION

### 3.1 CIVIL ADJUDICATION FRAMEWORK UNDER SECTION 13

FEMA violations constitute contraventions triggering administrative liability under Section 13, which establishes a quasi-judicial penalty regime distinct from criminal prosecution. The provision specifies that any person contravening FEMA provisions faces penalties of up to three times the sum involved in the

contravention where quantifiable, or up to Rs. 2 lakhs where quantification proves impossible.

The proportionality of these statutory penalties became subject to judicial review following the 2019 Jaipur IPL Cricket Private Limited v. Special Director, ED decision. The Appellate Tribunal reduced penalties from Rs. 98 crores to Rs. 15 crores, invoking the proportionality doctrine, a constitutional principle grounded in Articles 14 and 21 of the Indian Constitution to constrain administrative discretion.

Notably, while FEMA violations are administrative in character, underlying criminal conduct prosecutable under BNS provisions maintains full criminal character and liability, independent of FEMA's civil framework.

### 3.2 ADJUDICATION PROCESS AND NATURAL JUSTICE REQUIREMENTS

The adjudication mechanism operates under Section 16, which establishes quasi-judicial Adjudicating Authorities (AAs) with authority to hear FEMA contravention cases. The process comprises four distinct stages:

1. Investigation - conducted by the ED under Section 37 powers
2. Complaint filing - formal proceedings initiation before the AA
3. Adjudication proceedings - Show Cause Notice issuance, replies, oral hearings, evidence recording
4. Final orders - issued within one year (extendable with recorded reasons)

Critical natural justice requirements apply throughout adjudication: respondents must receive written Show Cause Notices; respondents possess rights to submit replies, appear with counsel, cross-examine witnesses, and present oral arguments; AAs must maintain reasoned records and issue written orders with findings on each allegation.

### 3.3 CRIMINAL PROSECUTION UNDER SECTION 13(1B) AND BNS INTEGRATION

Section 13(1B) permits criminal prosecution for specifically defined violations, creating a narrow criminal prosecution pathway distinct from civil adjudication. The provision applies when persons have acquired, held, or transferred any foreign exchange, foreign security, or immovable property situated outside India in contravention of Section 4, where the aggregate value exceeds prescribed

thresholds (presently Rs. 1 crore). Prosecution under this section permits imprisonment for terms extending to five years alongside monetary fines. Criminal prosecution under FEMA Section 13(1B) operates independently from criminal prosecutions under BNS provisions. Perpetrators face liability under both FEMA administrative framework and full BNS criminal prosecution, with BNS penalties potentially including imprisonment up to 5-7 years depending on offence severity.

### 3.4 INDEPENDENCE OF CIVIL AND CRIMINAL PROCEEDINGS

Civil adjudication and criminal prosecution proceedings operate independently, enabling simultaneous civil penalties and criminal prosecution based on identical facts. A 2025 Delhi High Court decision clarified that FEMA violations do not immunize perpetrators from BNS criminal liability for predicate offences committed in preparation of foreign exchange violations, such as Section 336 BNS forgery, Section 318 BNS cheating, or Section 61(2) BNS criminal conspiracy. The court held that while civil wrongs under FEMA constitute administrative contraventions, underlying criminal acts prosecutable under BNS retain independent criminal character. This decision clarifies that the criminal dimension of foreign exchange violations emerges through BNS crimes committed during violation execution, rather than from FEMA violations themselves.

## IV. JURISDICTIONAL OVERLAPS AND THE FEMA-PMLA-BNS NEXUS

### 4.1 STATUTORY DISTINCTION AND PRACTICAL INTEGRATION

While FEMA violations are not scheduled offences under PMLA Schedule, violations frequently constitute predicate activities enabling money laundering offences. The ED possesses authority under both statutes but operates distinct investigative regimes with different evidentiary standards, burden allocations, and remedial mechanisms.

Under FEMA, the ED investigates suspected violations, conducts administrative adjudications through AAs, imposes civil penalties, and in exceptional circumstances files criminal prosecution

complaints. The ED possesses no power of arrest under FEMA.

Critically, where FEMA violations are accompanied by predicate conduct constituting BNS offences such as Section 318 BNS (cheating), Section 319 BNS (cheating by personation), Section 336 BNS (forgery), or Section 61(2) BNS (conspiracy) criminal investigation and prosecution under BNS provisions proceeds through established police and court mechanisms independent of FEMA's administrative framework.

This creates a three-layered enforcement regime:

- i. FEMA civil adjudication by ED-appointed Adjudicating Authority
- ii. PMLA investigation and prosecution for money laundering predicate offences
- iii. BNS criminal prosecution for predicate offences such as Section 318 cheating and Section 336 forgery

#### 4.2 EVIDENTIARY AND BURDEN-OF-PROOF ASYMMETRIES

FEMA adjudication operates under civil burden standards (balance of probabilities), whereas PMLA and BNS prosecutions require criminal proof standards (beyond reasonable doubt). BNS provisions may incorporate presumptions (such as presumptions regarding criminal conspiracy or knowledge of forged documents) that may shift evidentiary burdens during trial.

Sophisticated foreign exchange crimes combining FEMA violations with underlying money laundering offences and BNS predicate crimes encounter duplicative proceedings with conflicting burden allocations:

- FEMA adjudication employs civil standards
- PMLA proceedings apply reverse burden
- BNS proceedings require beyond-reasonable-doubt proof with potential presumptions

This asymmetry creates situations wherein parties prevail under one regime's evidentiary standards while facing adverse determinations under alternative regimes' standards.

#### 4.3 BNS INTEGRATION AND CRIMINAL LIABILITY FRAMEWORK

The relationship between FEMA, PMLA, and BNS represents a critical intersection in contemporary

foreign exchange crime prosecution. BNS violations do not directly constitute FEMA contraventions; however, FEMA violations frequently involve predicate conduct constituting BNS crimes.

The Delhi High Court in *Manideep Mago v. Union of India & Ors.* held that FEMA does not immunize perpetrators from BNS prosecution for crimes committed in preparing foreign exchange violations. This principle clarifies that sophisticated schemes such as shell companies creating false documentation (Section 336 BNS forgery) or unauthorized forex platforms deploying fraudulent KYCs (Section 318 BNS cheating) trigger concurrent FEMA and BNS liability.

This framework requires police agencies or the CBI to initiate FIRs for predicate BNS offences before the ED can pursue parallel FEMA investigations and criminal prosecution.

### V. INVESTIGATIVE POWERS AND PROCEDURAL MECHANISMS

#### 5.1 SECTION 37 POWERS AND SEARCH/SEIZURE AUTHORITY

Section 37 of FEMA empowers the ED Director and Assistant Director-ranked officers to investigate suspected violations through powers equivalent to those of income tax authorities under the Income Tax Act, 1961.

The seizure framework under Section 37(3) authorizes ED officers to seize any document, currency, or security believed to relate to a FEMA contravention. Seized items must be inventoried, receipts issued, and the seizure recorded in writing. Within 30 days of seizure, items must be placed before a Competent Authority for confirmation.

These investigative mechanisms operate in parallel with potential criminal investigations under BNS provisions, requiring coordination between ED investigators (conducting administrative inquiries) and police investigators (pursuing BNS criminal offence investigations).

#### 5.2 SECTION 37A: VALUE EQUIVALENT SEIZURE

Section 37A authorizes ED seizure of value equivalent property located within India where foreign assets are held in contravention of Section 4. This provision addresses the practical limitation that

ED possesses no extraterritorial jurisdiction to seize property located outside India.

The seizure process requires ED officers to record reasons in writing before seizing value equivalent property. Within 30 days, the seizure order must be placed before a Competent Authority for confirmation. The Competent Authority may confirm or set aside the seizure within 180 days.

Where Section 37A seizures implicate property obtained through predicate BNS crimes (such as proceeds from Section 318 BNS cheating), coordination with law enforcement pursuing criminal investigation becomes essential to ensure seizure supports both administrative FEMA adjudication and criminal prosecution under BNS provisions.

### 5.3 ADJUDICATION PROCEDURES: SECTION 16 FRAMEWORK

The adjudication process under Section 16 establishes quasi-judicial AAs with investigative and adjudicatory authority. Upon investigation completion, the ED files formal complaints before the AA specifying alleged violations. The AA issues a Show Cause Notice requiring the respondent to submit written replies within prescribed periods (typically 30-60 days).

The AA's adjudication authority encompasses power to:

- Summon witnesses
- Compel document production
- Record evidence without Indian Evidence Act restrictions
- Impose penalties upon finding contraventions established
- Issue written reasoned orders within one year

Where FEMA adjudication involves respondents subject to parallel criminal investigation for BNS predicate offences, significant coordination challenges emerge. Statements obtained in FEMA adjudication may not be admissible in parallel BNS criminal proceedings without respondent's explicit consent, creating evidentiary complications.

### 5.4 APPELLATE STRUCTURE AND TRIBUNAL JURISDICTION

The Appellate Tribunal reconstituted following the 2016 Finance Act consolidates appellate functions under FEMA, PMLA, Benami Transactions (Prohibition) Act, and NDPS Act. The Tribunal must

dispose of appeals within 180 days of receipt, though extensions are possible with recorded reasons. Appeals from Tribunal orders lie to the High Court under Section 35 of FEMA.

The Tribunal may encounter situations where appellants simultaneously face appellate FEMA review and criminal prosecution under BNS provisions, requiring sensitivity to criminal proceedings' pendency and evidentiary standards.

## VI. REGULATORY GAPS IN FEMA ENFORCEMENT FRAMEWORK

### 6.1 DEFINITIONAL AMBIGUITIES

A persistent regulatory gap concerns the undefined phrase "bona fide business activity," repeatedly cited by the RBI as a prerequisite for overseas direct investment (ODI) approval. The absence of objective standards enables discretionary enforcement and creates legal uncertainty for legitimate cross-border investors.

Round-tripping structures-wherein foreign capital is reinvested into India through offshore subsidiaries-exemplify this definitional problem. Round-tripping frequently involves predicate conduct constituting:

- Section 318 BNS (cheating through fraudulent representations regarding capital origin)
- Section 61(2) BNS (conspiracy to circumvent capital controls)

While recent amendments to the 2022 Revised Framework explicitly prohibit round-tripping through beneficial ownership verification requirements, the framework still lacks clear statutory definitions distinguishing legitimate international capital movements from tax-motivated round-tripping schemes.

### 6.2 JURISDICTIONAL OVERLAPS AND INTER-AGENCY COORDINATION FAILURES

FEMA enforcement operates within a fragmented regulatory ecosystem involving multiple agencies the RBI, ED, SEBI, FIU-IND, CDBT, and police/CBI each possessing overlapping authority. These jurisdictional overlaps create confusion and inconsistent enforcement.

For instance, round-tripping schemes simultaneously implicate:

- FEMA violations (unauthorized capital transfer and ODI procedure violations)

- ii. PMLA offences (money laundering through structured transactions)
- iii. Income tax evasion (unreported income and improper deductions)
- iv. BNS crimes (Section 318 cheating, Section 336 forgery, Section 61(2) conspiracy)
- v. SEBI violations (if securities markets are implicated)

The absence of unified data-sharing platforms and coordinated investigation procedures results in delayed investigations, duplicative proceedings, and gaps wherein particular aspects of complex violations escape regulatory attention.

### 6.3 INADEQUATE DEFINITION AND DETECTION OF SOPHISTICATED ECONOMIC CRIMES

FEMA enforcement lacks comprehensive operational definitions and detection mechanisms for sophisticated foreign exchange crimes. Hawala transactions informal, unregulated money transfers circumventing official banking channels remain prevalent despite formal prohibition under FEMA Section 3.

Hawala operators frequently employ predicate conduct constituting:

- Section 318 BNS (cheating through fraudulent money transfer misrepresentations)
- Section 61(2) BNS (conspiracy to circumvent FEMA restrictions)

The 2025 OctaFX investigation, which uncovered Rs. 800 crore in alleged fraudulent forex trading within nine months, revealed sophisticated detection-evasion techniques: shell firms posing as e-commerce platforms; fake KYC documentation; URL masking; and fund disguising.

These mechanisms operate at the intersection of FEMA violations, PMLA offences, and BNS crimes (Section 318 cheating, Section 336 forgery, Section 61(2) conspiracy). Current FEMA enforcement mechanisms lack specialized protocols and technological infrastructure to detect these complex, technology-enabled violations.

### 6.4 PROCEDURAL AND CAPACITY CONSTRAINTS IN ENFORCEMENT

While ED enforcement activity increased substantially from FY 2014-15 to FY 2021-22 with 996 searches, 22,330 cases investigated, and Rs.

6,376.51 crore in penalties imposed the criminal conviction rate remains at 0.5% for FEMA violations. By comparison, the ED achieved a 92% conviction rate in PMLA cases between 2020-2025. This enforcement-conviction gap reflects distinct procedural frameworks: PMLA prosecutions occur in specialized PMLA courts with dedicated resources; FEMA adjudication remains dispersed across multiple forums lacking specialized expertise.

Moreover, where FEMA violations implicate BNS predicate crimes, the conviction rate disparity reflects investigative and prosecutorial resource constraints across multiple agencies. As of March 2022, while 992 prosecution complaints had been filed under FEMA, criminal convictions remained fewer than 50, yielding a conviction rate below 5%.

### 6.5 COMPOUNDING FRAMEWORK LIMITATIONS

While the compounding mechanism under Section 15 provides settlement opportunities, it creates enforcement gaps through categorical restrictions. The rules establish three violation categories:

1. Sensitive contraventions (requiring mandatory adjudication)
2. Substantive contraventions (requiring adjudication with limited compounding)
3. Technical contraventions (enabling streamlined settlement)

The compounding framework explicitly excludes violations under Section 3(a) (unauthorized dealings in foreign exchange), which paradoxically encompasses core FEMA violations most directly implicating criminal intent. This limitation means that sophisticated round-tripping and hawala operations often involving multiple contraventions including unauthorized dealings and predicate BNS crimes-cannot benefit from streamlined compounding mechanisms.

## VII. CRIMINAL LIABILITY FRAMEWORK AND BNS INTEGRATION

### 7.1 FEMA'S ADMINISTRATIVE CHARACTER AND BNS INDEPENDENCE

A foundational principle clarified through recent jurisprudence is that FEMA violations do not automatically translate into BNS offences. FEMA and BNS operate in distinct fields: FEMA address

civil wrongs relating to foreign exchange transactions, while BNS codifies conventional crimes. The 2025 Delhi High Court decision held that the absence of FEMA's express repeal of BNS means that criminal offences prosecutable under BNS retain independent criminal liability. While foreign exchange violations constitute contraventions of FEMA's administrative regime subject to penalties, they do not per se generate BNS offences. The criminal dimension emerges only where predicate BNS offences are established.

## 7.2 PREDICATE CRIMES AND MULTI-LAYERED PROSECUTORIAL STRATEGY

Sophisticated economic crimes combining FEMA violations with BNS offences require a multi-layered prosecutorial strategy. Consider a round-tripping scheme: fraudulent documentation (Section 336 BNS forgery), conspiracy to circumvent FEMA procedures (Section 61(2) BNS conspiracy), false representations regarding capital source (Section 318 BNS cheating), and unauthorized foreign holdings (FEMA Section 4 violation potentially triggering Section 13(1B) criminal prosecution). Research indicates that the average timeline from FEMA violation identification to criminal conviction ranges from 5-7 years, compared to 2-3 years for comparable PMLA cases prosecuted in specialized courts. BNS criminal prosecutions typically require 3-5 years for trial completion.

## VIII. INTERNATIONAL COORDINATION AND CROSS-BORDER ENFORCEMENT CHALLENGES

International coordination mechanisms through the Egmont Group, comprising financial intelligence units from 159 jurisdictions, facilitate cross-border intelligence exchange regarding suspicious foreign exchange flows and money laundering activities. These arrangements facilitate investigation of international shell company networks, beneficial ownership verification across jurisdictions, and tracing of proceeds of crime across borders. Where cross-border foreign exchange crimes involve predicate BNS crimes (such as Section 61(2) conspiracy involving international participants, or Section 336 forgery creating documents used across borders), international coordination becomes

essential for obtaining evidence, identifying co-conspirators, securing freezing of foreign assets, and facilitating extradition requests. However, confidentiality provisions in most bilateral treaties prevent Indian authorities from publicly disclosing foreign-sourced information, impeding comprehensive public disclosure regarding enforcement actions. These restrictions limit deterrent efficacy and transparency. Many tax haven jurisdictions impose strict secrecy regimes regarding beneficial ownership information, creating enforcement barriers. Contemporary foreign exchange violations frequently employ cross-border shell company networks leveraging jurisdictional regulatory differences, incorporating predicate conduct constituting Section 336 BNS (forgery of trade documents), Section 318 BNS (cheating through fraudulent FDI representations), and Section 61(2) BNS (conspiracy to circumvent capital controls). Current ED detection mechanisms prove inadequate against such structures.

## IX. CASE STUDY ANALYSIS: ENFORCEMENT OUTCOMES AND JURISPRUDENTIAL PATTERNS

Recent cases demonstrate increasing willingness of appellate forums to invoke proportionality constraints on ED penalties. The Jaipur IPL Cricket Private Limited case reduced penalties from Rs. 98 crores to Rs. 15 crores. The 2025 PwC case reduced penalties from Rs. 230 crores to Rs. 81 crores. The BBC World Service case imposed Rs. 3.44 crore penalties. These decisions signal that while the ED possesses statutory authority to impose three-times penalties, appellate forums increasingly scrutinize whether penalties reflect proportionate responses to violation severity. Importantly, where respondents simultaneously face FEMA penalty adjudication and parallel BNS criminal prosecution for predicate offences, proportionality principles applied in FEMA adjudication may influence, but do not determine, BNS sentencing. Criminal courts retain independent sentencing discretion under BNS. The stark disparity between PMLA conviction rates (92% in 2020-2025) and FEMA conviction rates (0.5% from 2014 onwards) reflects fundamental differences in procedural frameworks. Conviction statistics from March 2022 indicate: 992 FEMA prosecution

complaints filed from FY 2004-05 forward; fewer than 50 criminal convictions; FEMA conviction rate below 5%; average conviction timeline: 5-7 years from violation identification. Where FEMA violations involve predicate BNS crimes, the dual-layer conviction problem emerges: inadequate conviction rates for both FEMA violations and predicate BNS offences, creating substantial impunity for sophisticated foreign exchange criminals.

#### X. RECOMMENDATIONS

FEMA enforcement requires statutory and institutional reforms addressing identified regulatory gaps. Parliament should amend FEMA to: (1) define "bona fide business activity" with objective criteria; (2) clarify the relationship between FEMA violations and Bharatiya Nyaya Sanhita (BNS) predicate crimes, confirming that violators face cumulative liability across both frameworks; and (3) expand criminal prosecution grounds beyond Section 4 violations to encompass round-tripping schemes, unauthorized forex trading platforms, and shell company operations. The ED and RBI should establish a centralized foreign exchange intelligence platform integrating real-time data from multiple agencies (RBI, ED, SEBI, FIU-IND, CBDT, police/CBI) with standardized data-sharing protocols and coordinated investigation procedures. Designated inter-agency liaison officers should facilitate BNS predicate crime investigations and coordinate FEMA adjudication timelines with BNS criminal prosecutions. Specialized FEMA courts with dedicated judges and prosecutors should be established, modeled on existing PMLA courts. Investment in artificial intelligence and machine learning systems should enable real-time transaction screening, beneficial ownership verification, and anomaly detection identifying shell company characteristics and structured transaction patterns. International cooperation mechanisms should be strengthened through expanded bilateral information exchange agreements and joint investigation teams for complex, multinational cases.

#### XI. CONCLUSION

Foreign exchange violations under FEMA 1999 remain inadequately addressed despite substantial ED enforcement activity. While the ED generated Rs.

6,376.51 crore in penalties and seized Rs. 7,066 crore in assets from FY 2014-15 to FY 2021-22, the 0.5% criminal conviction rate reveals fundamental enforcement deficiencies. This enforcement-conviction gap reflects: definitional ambiguities enabling discretionary enforcement; jurisdictional overlaps between FEMA, PMLA, and BNS creating duplicative proceedings; inter-agency coordination failures; and inadequate technological infrastructure for detecting sophisticated violations. Recent appellate jurisprudence invoking proportionality constraints demonstrates judicial willingness to limit administrative overreach, yet case-by-case review delays proceedings without addressing structural deficiencies. The relationship between FEMA violations and BNS predicate crimes particularly Sections 318 (cheating), 336 (forgery), and 61(2) (conspiracy) remains inadequately coordinated, with average criminal conviction timelines extending 5-7 years compared to 2-3 years for PMLA cases. Contemporary foreign exchange crimes including round-tripping schemes, hawala networks, and unauthorized forex trading platforms exploit these regulatory gaps. Meaningful reform requires: statutory clarification of FEMA-BNS relationships; consolidated inter-agency coordination through integrated data systems; establishment of specialized FEMA courts; investment in technology-enabled detection systems; and enhanced international cooperation. Without such reforms, FEMA will continue functioning as a penalty-collection regime rather than a genuine instrument of economic crime prevention.

#### REFERENCES

- [1] Mukherjee, P. (2025). Round-tripping and the legal gaps between FEMA and tax laws in India: Regulatory challenges and reform imperatives. *The Amikus Qriae: Legal Theory & Practice Review*, 8(3), 1–28.
- [2] Venkatesh, S. (2017). Criminalizing the possession of foreign exchange: Historical evolution from FERA to FEMA and contemporary enforcement challenges. *Journal of Legal Studies & Research*, 1(2), 1–18.
- [3] Saxena, M. (2024). Prosecutions under PMLA: Provisions and key issues in contemporary money laundering

- jurisprudence. *Metalegal Research Journal*, 7(4), 1–35.
- [4] Sharma, R. (2024). India and anti-money laundering measures: A critical analysis of predicate offences and enforcement mechanisms. *International Journal of Financial Markets & Research*, 2(1), 1–25.
- [5] Ariyani, E. (2022). Position & evidence of predicate crime in money laundering: Analysis of multi-jurisdictional perspectives. *Atlantis Press International Journal of Criminal Justice & Law*, 3(2), 108–130.