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DARSHAN MALA SERIES (DMS)

25 Frequently Asked Questions (FAQs) on the National Investigation Agency (NIA) ➔ ED nexus for investigations and Adjudications across the India

The Darshan Mala Series (DMS) presents weekly research and updates based on information available in the public domain.

This edition, comprising 25 Frequently Asked Questions (FAQs), examines the National Investigation Agency (NIA) ➔ ED nexus for investigations and Adjudications across the India, including the respective roles, jurisdiction, investigative processes, and areas of interaction between the two agencies.

The Series covers matters reported in the public domain concerning Special Courts, proceedings before such Courts, and proceedings relating to adjudication and other judicial or quasi-judicial processes concerning enforcement, investigation, attachment, prosecution, and related matters.

The Darshan Mala Series has been initiated with inspiration from the vision of the Hon'ble Prime Minister of India to promote greater public awareness and informed discussion on matters relating to governance, accountability, transparency, administration, enforcement, and the functioning of the justice delivery system.

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The contents of this Series have been compiled exclusively from information available in the public domain, including official statements, court records, judicial orders, government publications, media reports, and other publicly accessible sources.

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25 FAQs on NIA → ED nexus for investigations and Adjudications across the India

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25 FAQs on NIA➔ED nexus for investigations and Adjudications across the India

(Source of information's used in preparation of weekly updates are taken from public domain)

1. What is NIA ➔ED nexus for investigations and Adjudications across India?

(i) *NIA ➔ ED nexus means the legal and operational coordination between the National Investigation Agency (NIA) and the Directorate of Enforcement (ED) when the "same case" involves national-security offences, terrorism-related financing, or Proceeds of Crime (PoC).*

(ii) *The NIA and ED have different statutory mandates.*

(iii) *The NIA investigates and prosecutes offences assigned to it under the NIA Act, 2008, while ED investigates money laundering under the Prevention of Money Laundering Act (PMLA) 2002.*

(iv) *The NIA and ED's investigations may overlap in facts, suspects, financial transactions and evidence, but 1 agency does "not automatically" acquire the other's statutory powers.*

2. What is NIA's statutory jurisdiction?

(i) *The NIA investigates scheduled offences affecting the sovereignty, security and integrity of India, including terrorism-related offences under the UAPA and other offences listed in the NIA Act, 2008.*

(ii) ***A flow chart for NIA's statutory jurisdiction***

Investigation under the NIA Act, 2008

➔

charge-sheet under the NIA Act, 2008

➔

Prosecution before the competent NIA Special Court under the NIA Act, 2008.

3. What is ED's statutory jurisdiction?

(i) The ED investigates the offence of money laundering, traces Proceed of Crime (PoC), and exercises statutory powers for attachment, prosecution and adjudication under the PMLA, 2002.

(ii) The ED also investigates FEMA violations under its separate statutory framework.

(iii) ***A flow chart for ED's statutory jurisdiction***

PMLA complaint under the PMLA, 2002.
↓
Provisional attachment of property under the PMLA, 2002
↓
Adjudication of attached property by Adjudicating Authority under PMLA, 2002.

4. How NIA → ED nexus works?

- *A typical case may proceed through the following stages however, this is a legal framework, "not a claim" that every NIA case leads to an ED investigation.*

● *Stage 1- NIA's investigation* ●

Scheduled offence i.e. as a terrorism-related offence under UAPA, 1967.
↓
Financial trail identified under the NIA Act, 2008.
↓
Bank transactions, assets, funding sources or other evidence relevant to Proceeds of Crime (PoC) under the NIA Act, 2008.

● *Stage 2- ED or PMLA's investigation* ●

- *The ED examines whether the scheduled offence generated Proceeds of Crime (PoC) and whether the statutory ingredients of money laundering are present.*

● *Stage 3- Separate proceedings* ●

(i) The NIA prosecutes the scheduled offence and the ED pursues PMLA proceedings and attachment or adjudication where legally justified.

(ii) The legal basis for the NIA investigation is under the sections 3, 6 and 8 of NIA Act, 2008.

(iii) The ED's PMLA investigation is distinct from the predicate-offence investigation.

(iv) The Supreme Court has expressly recognized that the 2 investigations agencies can be separate and distinct.

5. What is investigation versus adjudication?

(i) The NIA "criminal investigation" and ED's PMLA proceedings are "not the same" legal process.

S.No	Particulars	NIA	ED
(a)	Governing law	NIA Act, 2008, UAPA, 1967 and other scheduled laws	PMLA, 2002
(b)	Investigation	Scheduled offences and connected offences within its statutory authority	Money laundering and the Proceeds of Crime (PoC)
(c)	Financial evidence	May collect evidence relevant to the scheduled offence	May investigate the financial trail and use relevant evidence
(d)	Adjudication	"Criminal trial" before the competent Special Court	Adjudicating Authority decides whether attached property is involved in money laundering
(e)	Final "criminal prosecution"	NIA's charge-sheet and trial	ED's complaint and PMLA "criminal trial"

(ii) The PMLA adjudicating authority is "not a criminal" trial court.

(iii) The PMLA adjudicating authority is considers the provisional attachment, gives the affected person an opportunity to respond, and determines whether the property is involved in money laundering under section 8 of PMLA, 2002.

(iv) The "criminal guilt" is determined through the competent Special Court.

6. What are evidences can be shared?

(i) The NIA and ED may coordinate and use relevant material from "same investigation", subject to their respective statutory powers and evidentiary requirements.

(ii) *The section 54 of PMLA, 2002 provides for assistance by officers of specified departments and agencies, and NIA's statutory investigation may produce financial evidence relevant to a PMLA case.*

(iii) *However, the "same evidence" does "not automatically" mean the "same offence" or the "same adjudicatory finding".*

(iv) *The ED is required to establish the ingredients of money laundering and the required connection between the property and Proceeds of Crime (PoC).*

(v) *The NIA's findings in its scheduled-offence proceedings does "not by itself", conclusively determine ED's PMLA adjudication.*

7. What is NIA's and ED's different statutory roles?

(i) *The NIA ➔ ED nexus is strongest in cases involving terror financing, Proceeds of Crime (PoC), money laundering, hawala and cross-border financial networks.*

(ii) *The NIA's and ED's mandates are different, but they can investigate different aspects of the "same underlying criminal activity".*

8. What is comparison between NIA's and ED's different statutory roles?

S.No	NIA	ED
(i)	*Primarily investigates and prosecutes terrorism and national-security-related scheduled offences under the NIA Act, 2008 and UAPA, 1967.*	*Primarily investigates money laundering under the PMLA, 2002 and foreign-exchange violations under the FEMA, 1999.*
(ii)	*Its focus on terrorist acts, conspiracy, terror organisations, recruitment, terrorism financeing and support infrastructure.*	*Its focus on Proceeds of Crime (PoC), money laundering, assets, financial trails and attachment or confiscation of property.*
(iii)	*The prosecution proceeding is conducted before the designated Special Court under the NIA Act, 2008.*	*PMLA prosecution's complaint is filed before the Special Court under the PMLA, 2002. FEMA, 1999 proceedings are separately dealt with under the statutory adjudication mechanism.*

(iv)	It's including core jurisdiction i.e. Scheduled offences affecting sovereignty, security and integrity of India.	It's including core jurisdiction i.e. laundering of Proceeds of Crime (PoC) and contravene-tions relating to foreign exchange.
(v)	The investigations to include a primarily "criminal investigation" concerning underlying scheduled or national-security offence.	The investigations to include a primarily financial investigation concerning Proceeds of Crime (PoC) and laundering activity.

● Conclusion ●

- *The NIA itself describes its mandate as targeting the entire terrorism ecosystem, including financing.*
- *The ED's statutory mandate includes tracing Proceeds of Crime (PoC), provisional attachment and prosecution under the PMLA, 2002.*

9. What is flow chart for NIA ➔ ED nexus?

● NIA's and ED's roles for investigations and adjudications ●

Terrorist activity or UAPA offence

↓

Funding generated or received through hawala, business, banking channels, etc.

↓

NIA investigates the terrorism or terror-financing aspect

↓

ED investigates the financial trail and money-laundering aspect under PMLA

↓

Tracing

↓

Identification of Proceeds of Crime (PoC)

↓

Attachment

↓

Prosecution or confiscation

10. What is important legal distinction between NIA and ED?

(i) *The NIA registration does "not automatically" mean that ED must register a PMLA case under the PMLA, 2002.*

(ii) *There has to be a legally sustainable scheduled offence or predicate offence and Proceeds of Crime (PoC) for PMLA, 2002 to operate.*

(iii) *However, the ED can have its "own source of information" and financial investigation*

(iv) *The NIA case is "not a statutory prerequisite" in every ED investigation.*

11. What is a best example for NIA → ED nexus?

● Suppose NIA investigates a UAPA case alleging that INR 10 crore was collected and transferred for terrorist activities ●

(i) ***The NIA's investigations***

(a) *Who collected the money?*

(b) *Who financed the organisation?*

(c) *Who transferred it?*

(d) *What was the terrorist purpose?*

(ii) ***The ED's investigations***

(a) *Where did the INR 10 crore originate?*

(b) *Whether it's happened through bank, hawala or business entities?*

(c) *What properties were acquired?*

(d) *Was the money layered or projected as legitimate?*

(e) *What constitutes the Proceeds of Crime (PoC)?*

(iii) ***The NIA and ED's parallel investigations***

- *The NIA and ED are permitted for parallel investigations and to share intelligence or evidence, beside remaining legally distinct.*

12. What is legal route from NIA or UAPA case to ED or PMLA investigations?

● Starting point for NIA or UAPA case ●

(i) The NIA registers or takes over a case alleging offences under UAPA, 1967 i.e. terrorism, raising funds, conspiracy, facilitation, or dealing with terrorist proceeds.

(ii) The UAPA, 1967 expressly contains offences concerning terrorist acts, raising funds, conspiracy, holding proceeds of terrorism and support to terrorist organisations.

● Starting point for ED or PMLA case ●

(i) The ED is required to investigate that the alleged UAPA offence constitute a "scheduled offence" under the PMLA Schedule

(ii) And, the ED is required to identify the property is derived or obtained from that "criminal activity"?

(iii) The ED is required to satisfy about scheduled offence and also Proceeds of Crime (PoC) under section 2(1)(u) of PMLA, 2002 as property derived or obtained, directly or indirectly, from "criminal activity" relating to a scheduled offence, including the value of such property.

13. What is Supreme Court's decided legal route for NIA or UAPA case?

- *The Supreme Court has emphasised that the existence of Proceeds of Crime (PoC) is a sine qua non for the offence of money laundering under the PMLA, 2002.*

UAPA scheduled offence

↓

"Criminal activity" relating to that offence

↓

Property derived or obtained from that "criminal activity"

↓

Proceeds of Crime (PoC) under Section 2(1)(u) of the PMLA, 2002.

↓

Process or activity involving those proceeds under Section 3 of the PMLA, 2002.

↓

PMLA investigation by ED under the PMLA, 2002.

14. What are important factors for triggering to ED?

● Route A — NIA or police FIR ➔ ED independently acts ●

(i) ***NIA's investigations***

- *(a) Collection of funds*
- *(b) Hawala transactions*
- *(c) Bank transfers*
- *(d) Shell or front entities*
- *(e) Purchase of property*
- *(f) Movement of funds abroad*
- *(g) Cryptocurrency or digital assets*
- *(h) Cash generation or layering*
- *(i) Use of "criminal proceeds"*

(ii) The ED is permitted to examine that material and to commence its own PMLA inquiry or investigation under the PMLA, 2002.

(iii) The Supreme Court has held that ECIR is an internal ED document and is "not equivalent to an FIR".

(iv) The absence of a separately registered FIR does "not, by itself, prevent" ED from commencing action under PMLA, 2002.

● Route B — NIA information ➔ ED under Section 66(2) ●

(v) The section 66(2) of PMLA, 2002 provides a mechanism for ED to share information or material with other law-enforcement agencies where it comes across material relating to an offence.

(vi) The reverse practical situation can also arise: information or material from another investigating agency, including NIA, can reach ED and become the basis for examining the PMLA angle.

(vii) Recent judicial discussion has reiterated the importance of inter-agency information sharing under Section 66(2) of the PMLA, 2002.

15. Whether the ED's ECIR is "not same" the NIA's FIR?

Yes

(i) ***The NIA's FIR***

- *The NIA's FIR records the alleged UAPA or predicate offence.*

(ii) ***The ED's ECIR***

- *The ED's ECIR records ED's internal registration of information concerning a possible PMLA offence under the PMLA, 2002.*

(iii) ***The Supreme Court's decision***

- *The Supreme court has specifically held that an ECIR can "not be equated" with an FIR.*

(iv) ***Flow chart for nexus between NIA's FIR and ED's ECIR***

NIA FIR or material under the NIA Act, 2008

↓

Disclosure of scheduled offence & Proceeds of Crime (PoC) under the PMLA, 2002

↓

ED PMLA investigation or ECIR under the PMLA, 2002

16. What is Supreme Court's 3 fundamental facts for PMLA's frameworks?

(i) *A scheduled offence has been committed.*

(ii) *The property concerned has been derived or obtained, directly or indirectly, from that "criminal activity".*

(iii) *The person concerned is directly or indirectly involved in a process or activity connected with that property.*

(iv) *Therefore, The NIA has registered a UAPA case does "not by itself establish money laundering".*

(v) ***Conclusion***

- *The ED is required to connect the alleged "criminal activity" with Proceeds of Crime (PoC) and then with the relevant person's involvement in the prohibited process or activity.*

17. What is best example for parallel investigation?

(i) ***INR 5 crore raised for a terrorist organisation***

UAPA offence

↓

INR 5 crore generated or raised through "criminal activity"

↓

INR 5 crore constitutes alleged Proceeds of Crime (PoC)

↓

Hawala, transfer to company or property transactions

↓

Concealment, possession, acquisition, use or projection as untainted

↓

Section 3 PMLA allegation

↓

ED investigation

(ii) ***The ED's focus is consequently different from the NIA***

S.No	NIA	ED
(a)	Terrorist activity	Money laundering
(b)	Terrorist organisation	Proceeds of crime
(c)	Conspiracy or facilitation	Financial trail
(d)	Terror financing	Layering or integration
(e)	UAPA evidence	Banking, property or business records
(f)	Terrorist network	Beneficial ownership / assets
(g)	Terror-related offences	Attachment or confiscation of Proceeds of Crime (PoC)
(h)	Investigation and prosecution under NIA Act, 2008 or UAPA, 1967	Investigation under PMLA and FEMA

(iii) The ED describes its PMLA function as tracing assets derived from Proceeds of Crime (PoC) provisionally attaching property and pursuing prosecution or confiscation.

18. Whether the UAPA's allegation is automatic PMLA liability?

No

(i) The NIA is required to examine whether a scheduled UAPA offence or "criminal activity" been alleged and supported by material?

(ii) *The ED is required to examine whether the specific property is connected to that "criminal activity" and to a Proceed of Crime (PoC) under section 3 of PMLA, 2002?*

(iii) *The Supreme Court has reiterated that mere existence of Proceeds of Crime (PoC) "without" the necessary connection to the "criminal activity" and laundering activity, is "not by itself enough".*

19. What is the ED's investigations and adjudications "after" NIA's FIR?

NIA FIR, charge-sheet or intelligence under the NIA Act, 2008

↓

Information reaches ED under the NIA Act, 2008

↓

ED examines scheduled offence under the PMLA, 2002

↓

Identification or tracing of alleged Proceeds of Crime (PoC) under the PMLA, 2002

↓

ECIR or internal PMLA investigation under the PMLA, 2002

↓

Summons under Section 50 of the PMLA, 2002

↓

Search or seizure under Section 17 of the PMLA, 2002

↓

Arrest under Section 19 of the PMLA, 2002

↓

Provisional attachment under Section 5 of the PMLA, 2002

↓

Complaint before PMLA Special Court under Section 45 or 44 framework of the PMLA, 2002

↓

Trial, confiscation or restoration issues under the PMLA, 2002

- *The attachment and prosecution functions are expressly part of ED's statutory PMLA mandate under the PMLA, 2002.*

20. What are consequences for the ED when NIA or UAPA ultimately fails?

(i) *The Supreme Court has continued to examine the relationship between the predicate or scheduled offence and the PMLA proceedings beside NIA fails.*

(ii) *Recent Supreme Court decisions emphasise the significance of a live scheduled offence and the existence of Proceeds of Crime (PoC) are required beside NIA fails.*

● *The Supreme Court Judgments against the NIA ➔ ED Nexus* ●

21. What is Supreme Court judgement on Vijay Madanlal v. Union of India (2022)?

(i) The Supreme Court held that PMLA proceedings can "not proceed" merely on an assumption that a scheduled offence has been committed.

(ii) The Supreme Court held that 3 essential requirements should be satisfied:

(a) A "criminal activity" relating to a scheduled offence

(b) A property derived or obtained from such "criminal activity"

(c) A direct connection between the alleged property and scheduled offence.

(iii) The Supreme Court specifically clarified that "not every" property connected with a "criminal investigation" becomes Proceeds of Crime (PoC).

(iv) ***The ED is required to independently demonstrate****:*

Scheduled Offence under the PMLA, 2002

↓

"Criminal Activity" under the PMLA, 2002

↓

Property Derived or Obtained under the PMLA, 2002

↓

Proceeds of Crime (PoC) under the PMLA, 2002

↓

Money Laundering under the PMLA, 2002

22. What is Supreme Court judgement on Pavana Dibbur v. ED (2023)?

(i) The Supreme Court held that property can be treated as Proceeds of Crime (PoC) when it is derived or obtained from "criminal activity" relating to a scheduled offence under the PMLA, 2002.

(ii) The Supreme court held that mere possession of property or an allegation of illegality is "not sufficient" relating to a scheduled offence under PMLA, 2002.

(iii) The Supreme court held that there must be a demonstrable nexus between the scheduled offence and the particular property attached by the ED

(iv) *The Supreme court held that when the ED merely reproduces the NIA's Show Cause Notice (SCN), seizure memo, investigation report or allegations "without" independently identifying Proceeds of Crime (PoC), the attachment can be challenged for lack of statutory nexus.*

23. What is Supreme Court judgement on Ankush Vipan Kapoor v. NIA (2024)?

(i) *The Supreme Court held on Dec 16, 2024 that NIA's power under Section 8 of NIA, 2008 can extend to "another offence" committed by an accused when that offence is connected with the scheduled offence under investigation.*

(ii) *This is relevant to the scope of NIA "own investigation", but it does "not confer" general PMLA investigation powers on NIA.*

24. What is Supreme Court judgement on Rana Ayyub v. ED (2023)?

(i) *The Supreme Court explained on May 2023 the relationship between the PMLA Special Court and the court trying the scheduled offence under the PMLA, 2002.*

(ii) *However, the statutory conditions apply, the scheduled-offence trial is committed to the Special Court that has taken cognizance of the money-laundering offence under the PMLA, 2002.*

25. What is conclusion on Supreme Court's judgements?

(i) *The NIA investigation is "not automatically" ED investigation.*

(ii) *The NIA and ED may investigate connected facts under their respective statutes.*

(iii) *The Financial evidence collected by NIA may be relevant to ED, but its relevance does "not automatically" establish money laundering under the PMLA, 2002.*

(iv) *A scheduled offence and money laundering are distinct offences, though the PMLA offence requires the statutory connection to Proceeds of Crime (PoC).*

(v) *The NIA's Special Court and PMLA Adjudicating Authority have different functions.*

(vi) *The PMLA Adjudicating Authority decides attachment-related questions and it does "not replace" the NIA Special Court's "criminal jurisdiction".*

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