

## FINANCIAL INTELLIGENCE UNIT - ECONOMY

NEWS: Recently the **Financial Intelligence Unit-India (FIU-IND)** and the **Reserve Bank of India (RBI)** signed a Memorandum of Understanding (MoU) to boost coordination and information exchange for enforcing the **Prevention of Money Laundering Act (PMLA)**.

### WHAT'S IN THE NEWS?

#### Overview of FIU-IND

- **Definition and Role:**  
The **Financial Intelligence Unit – India (FIU-IND)** is the **central national agency** responsible for receiving, analyzing, and disseminating **financial intelligence related to suspicious transactions**, especially those involving **money laundering and terrorism financing**.
- **Strategic Importance:**  
FIU-IND plays a **critical role in India's financial security architecture**, acting as a key link between **financial institutions and law enforcement agencies**, both **within the country and globally**.

#### Establishment and Administrative Structure

- **Year of Establishment:**  
FIU-IND was **established in November 2004** by the **Government of India** to fulfill the country's obligations under the **Prevention of Money Laundering Act (PMLA), 2002** and various **international treaties**.
- **Governance and Reporting:**  
FIU-IND operates as an **independent body**, ensuring autonomy in its operations, and **directly reports to the Economic Intelligence Council (EIC)**, which is **chaired by the Union Finance Minister**.  
This high-level oversight ensures policy alignment and institutional coordination.

#### Core Functions of FIU-IND

- **i. Collection of Information:**  
FIU-IND receives multiple types of reports from **designated financial and non-financial institutions**. These include:
  - **Cash Transaction Reports (CTRs):** For high-value cash transactions exceeding prescribed thresholds.
  - **Suspicious Transaction Reports (STRs):** Where transactions are deemed suspicious based on behavioral or contextual indicators.

- **Other Reports:** Like Non-Profit Organization Transaction Reports (NTRs), Cross-Border Wire Transfer Reports (CBWTRs), etc.
- **ii. Analysis of Data:**  
The unit conducts **in-depth analytical processing of the collected data**, using advanced data tools to identify **patterns, linkages, and red flags** that may point to **illicit financial activities**.
- **iii. Information Sharing:**  
After analysis, **actionable intelligence** is shared with:
  - **Law Enforcement Agencies** (e.g., Enforcement Directorate, CBI, NIA) for investigation.
  - **Regulatory Authorities** (e.g., RBI, SEBI, IRDAI) for compliance and supervision.
  - **International Financial Intelligence Units** for cross-border collaboration.
- **iv. Central Repository Role:**  
FIU-IND acts as a **national repository of financial intelligence**, maintaining an **organized database** of all reports it receives.  
This database aids in **trend mapping, link analysis, and investigative support**.
- **v. Coordination:**  
The agency works towards building a **strong and coordinated national network** for anti-money laundering and counter-terror financing (AML/CFT), and also maintains **partnerships with international intelligence networks** like the **Egmont Group**.
- **vi. Research and Trend Analysis:**  
FIU-IND conducts **continuous research** to identify **emerging typologies of money laundering**, understand **sectoral vulnerabilities**, and publish **strategic assessments** to guide policy-making.

### Significance of the MoU Between FIU-IND and RBI

- **Purpose of the MoU:**  
The **Memorandum of Understanding (MoU)** between the **FIU-IND and the Reserve Bank of India (RBI)** aims to **formalize cooperation and facilitate systematic information exchange** between the two entities.
- **Enhanced AML/CFT Compliance:**  
The MoU ensures that **regulated entities** (like banks and NBFCs) **comply more effectively** with **Anti-Money Laundering (AML)** and **Combating the Financing of Terrorism (CFT)** obligations under Indian and international standards.
- **Structured Collaboration:**  
It provides a **structured mechanism** for:

- **Joint training programs** to build capacity.
- **Coordinated supervision** of reporting entities.
- **Real-time intelligence sharing** for better risk detection.
- **Joint risk assessments** to address system-level financial threats.
- **Strengthening Financial Integrity:**  
This collaboration will enhance **India's financial integrity**, build trust in its regulatory systems, and align with **Financial Action Task Force (FATF)** recommendations.

### What is Section 19 of the PMLA?

- **Section 19 of the PMLA** deals with **the power to arrest**.
- **Section 19(1):** It states that if the ED Director “**has on the basis of material in his possession, reason to believe** (that reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.”

### Concern with Section 19 (1) of Prevention of Money Laundering Act 2002

- In the above case, the ED has buttressed the words “**reason to believe**” in **Section 19**, arguing that the **Director may not go into the materials but has reason to believe, which is subjective and varies during the investigation**.
- **PMLA vs. Ordinary Law:** PMLA departs from ordinary criminal law. **The threshold is lower in ordinary law**, and obtaining bail is easier.
  - Under **Section 41 of the CrPC**, police can arrest without a warrant based on “**reasonable suspicion**” of committing a cognizable offence.
- **Condition for Bail Under PMLA:** The bar for bail under PMLA, which imposes a **reverse burden of proof** — which means that instead of the prosecution having to prove their accusation, it is the **accused who must prove their innocence** — too, is different from ordinary criminal law
- **Supreme Court's Stand:** Section 19(1) of the PML Act requires the designated officer to form an opinion of guilt based on admissible evidence, not merely possessing evidence. This opinion must be supported by material that would stand in court, emphasising the need for admissible evidence to establish guilt.

### Legal Position on Bail Provision of the PMLA

- **Constitutional Challenge:** In **Nikesh Tarachand Shah vs. Union of India (2018)**, the bail provision of the PMLA Act was **deemed unconstitutional** because it **violated Articles 14 and 21**.

- **Parliamentary Restoration:** Subsequently, Parliament restored the bail provision through amendments.
- **Judicial Upholding:** The SC, in the landmark Vijay Madanlal Chaudhary ruling in 2022, upheld the constitutional validity of the Section 19 ruling, which was reasonable and aligned with the objectives of the PMLA Act.
  - Although it **did not specifically address the necessity of arrest** and the **standard of evidence (proportionality aspects) required to arrest**, the SC ruled that the vast power to arrest itself is not unconstitutional.
  - One of the grounds on which the SC **upheld the stringent bail provisions** was that the **power to arrest is also narrow compared to ordinary law**.
- **Legislative Discretion:** The Court affirmed that including specific offences in the schedule falls within the purview of legislative policy.

#### **Provisions of the Prevention of Money Laundering Act (PMLA), 2002**

- **Section 3:** It defines **the offence of money laundering**, contingent upon the existence of a predicate offence.
- **Investigation Authority:** The **Central Bureau of Investigation (CBI) or State Police investigates** and prosecutes the predicate offence.
- **Section 4 specifies the penalties for offences** under the PMLA.
- **Section 50:** It Provides ED authorities with **civil court powers to summon** suspects for money laundering and record their statements.
- **Prescribed Obligations:** The PMLA mandates banking companies, financial institutions, and intermediaries to verify and maintain records of client identities and transactions.
  - They must also report such transactions to the **Financial Intelligence Unit (FIU-IND) in a prescribed format**.
- **Section 45:** Section 45 of the PMLA deals **with bail**. It first states that **no court can grant bail for offences** under this law and then mentions a few exceptions.
- **Twin Conditions of Bail:** The provision requires **the public prosecutor to be heard in all bail applications**, and when the prosecutor opposes bail, the court must apply a twin test.
  - These two conditions are: That there are “**reasonable grounds for believing that [the accused] is not guilty of such offence**”; and that “**he is not likely**

to commit any offence while on bail”.

- **Similar Provisions in Other Laws:** There are similar provisions in several other laws that deal with serious offences, for example, **Section 36AC of The Drugs and Cosmetics Act, 1940, Section 37 of The Narcotic Drugs and Psychotropic Substances Act, 1985, and Section 43D(5) of the Unlawful Activities Prevention Act, 1967.**
- **Adjudicating Authority:** The PMLA establishes an adjudicating authority with jurisdiction, power, and authority conferred by the Act.
- **Appellate Tribunal:** Additionally, an **Appellate Tribunal** is envisaged to hear appeals against orders of the Adjudicating Authority and authorities such as the Director of FIU-IND.
- **Special Courts:** Special Courts are designated under the PMLA to try offences punishable under the Act and offences that can be charged under the **Code of Criminal Procedure, 1973**, in the same trial.
- **International Agreements:** The PMLA empowers the central government to enter into agreements with foreign governments to enforce the provisions of the Act, exchange information, or investigate cases related to offences under the PMLA.

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