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# THE PARADOX OF ECONOMIC SOVEREIGNTY: A JURISPRUDENTIAL ANALYSIS OF DOUBLE JEOPARDY AND PROCEDURAL FAIRNESS WITHIN THE PMLA FRAMEWORK

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## ABSTRACT

The constitutional protection against double jeopardy, enshrined in Article 20(2) of the Indian Constitution, serves as a vital safeguard against repetitive state prosecution. However, the rise of the Prevention of Money Laundering Act, 2002 (PMLA) has introduced a complex "dual-track" enforcement mechanism that tests the limits of this doctrine. This article examines the intersection of Article 20(2) and the PMLA, analyzing the "standalone" nature of laundering offenses versus their inherent dependency on predicate crimes. By synthesizing the landmark *Vijay Madanlal Choudhary* (2022) judgment with cutting-edge 2024–2026 rulings from the Supreme Court and High Courts, this research explores the "continuing offense" fiction, the "automatic collapse" principle, and the recent judicial shift toward procedural fairness under Article 21. It concludes that while PMLA prosecutions rarely trigger traditional double jeopardy bars due to the "identity of offense" test, emerging mandates for transparency and the "No Wall, No Plaster" doctrine are providing new avenues for constitutional relief in an era of aggressive financial regulation.

## I. Introduction: The Collision of Finality and Economic Security

The doctrine of double jeopardy, derived from the common law maxims of “*autrefois convict* and *autrefois acquit*”, is a cornerstone of criminal justice intended to ensure that no individual is "twice vexed" for the same cause. In the Indian constitutional scheme, this protection is specifically narrowed under Article 20(2) to the prohibition of repeated prosecution and punishment following a valid conviction. While this principle provided relative clarity in traditional criminal law, the advent of specialized economic statutes has fractured the landscape.

“The Prevention of Money Laundering Act, 2002 (PMLA)” does not criminalize the original "predicate" offense but targets the subsequent process of handling the "proceeds of crime". This creates a jurisprudential paradox: an individual may face trial for a scheduled offense (e.g., corruption, fraud, or drug trafficking) and simultaneously or subsequently face a separate trial for the act of laundering the money generated by that very same crime. As the Enforcement Directorate (ED) intensifies its use of the PMLA, the question of whether this dual-track system constitutes a violation of Article 20(2) has moved from academic debate to a frequent constitutional challenge in the higher judiciary.

## II. The Constitutional Prism: The "Offense-Centric" vs. "Act-Centric" Approach

To understand why PMLA trials often survive double jeopardy challenges, one must look at the restrictive interpretation of Article 20(2). Unlike the broader protections in the United States or the United Kingdom, the Indian Supreme Court has consistently held that the bar is only attracted when three cumulative conditions are met: prior prosecution, punishment, and identity of offense.

The judiciary distinguishes between the "same act" and the "same offense". In “*State of Madhya Pradesh v. Veereshwar Rao Agnihotri*”, the Court established that even if two charges arise from the same factual matrix, they represent distinct legal wrongs if their "essence, import, and content" differ. In the PMLA context, the predicate offense is seen as a crime against social order or property, whereas money laundering is viewed as an aggravated offense against “the financial integrity and sovereignty of the nation”. Consequently, under the "Different Fields" doctrine, parallel proceedings are held to operate in separate legal spheres, preventing the "identity of offense" required to trigger Article 20(2).

This distinction is further codified in “Section 300 of the Code of Criminal Procedure (now Section 355 of the Bharatiya Nagarik Suraksha Sanhita, 2023)”, which offers a broader protection including *autrefois acquit*. However, the judiciary has generally held that the "standalone" nature of the PMLA creates a new offense every time proceeds are layered or integrated, effectively making each transaction a fresh cause of action .

### III. The 2019 Amendment and the Meta-Fiction of the "Continuing Offense"

A pivotal moment in the expansion of PMLA powers was the Finance Act, 2019, which inserted an Explanation to Section 3 . This amendment clarified that money laundering is a "continuing activity" that persists as long as an individual is in possession, concealment, or enjoyment of the proceeds of crime .

This "continuing offense" doctrine has profound implications for double jeopardy and the prohibition of retrospective laws under Article 20(1). In the 2025 ruling of “*Pradeep Nirankarnath Sharma v. Directorate of Enforcement*”, the Supreme Court reaffirmed that even if the predicate crime was committed decades ago-or before the PMLA was enacted-the act of "enjoying" those proceeds today constitutes a fresh offense . By characterizing laundering as a persistent state rather than a static event, the legislature and judiciary have effectively bypassed traditional timelines of criminality .

Critics argue that this creates a "systematic breakdown" of legal certainty, allowing the state to reach back indefinitely . However, the current judicial consensus is that PMLA penalizes the *post-enactment* handling of illicit proceeds, not the prior crime itself, thus satisfying the non-retrospectivity mandate of Article 20(1) .

### IV. The "No Wall, No Plaster" Doctrine: Limits of Dependency

Despite the PMLA’s status as a "standalone" statute, it remains inextricably linked to the "proceeds of crime" derived from a scheduled offense . This dependency was authoritatively refined in the watershed judgment of “*Vijay Madanlal Choudhary v. Union of India (2022)*” and further clarified in “*Pavana Dibbur v. Directorate of Enforcement (2023)*” .

The Supreme Court introduced the "No Wall, No Plaster" doctrine: the scheduled offense acts as the "wall" upon which the PMLA charge is the "plaster" . If a competent court acquits an individual of the predicate offense on its merits-effectively declaring that no crime occurred-

the "proceeds of crime" cease to exist in the eyes of the law. In such instances, the PMLA trial cannot survive because its foundational element has evaporated .

This creates a nuanced "backdoor" protection akin to *autrefois acquit*. While technically the trials are for different offenses, an acquittal on merits in the first trial provides a substantive defense in the second . However, the judiciary distinguishes this from "technical discharges" (e.g., lack of valid sanction). If the predicate trial fails due to procedural defects, the "wall" is not demolished; the PMLA trial remains valid as the accused was never in "legal jeopardy" during the procedurally void first trial .

## **V. 2024–2026 Landmark Jurisprudence: The Shift Toward Procedural Fairness**

While the 2022 *Vijay Madanlal* judgment provided a broad endorsement of the PMLA, the years 2024 through 2026 have seen the Supreme Court moderate the ED's reach, focusing on Article 21's guarantee of a fair trial and personal liberty .

### **A. The 24-Hour Production Mandate**

In “*Enforcement Directorate vs. Subhash Sharma (2025)*”, the Supreme Court held that the constitutional safeguard requiring an arrestee to be produced before a Magistrate within 24 hours (Article 22(2)) is non-negotiable . If this timeline is violated, the arrest is rendered "completely illegal," and the accused must be released on bail regardless of the stringent "twin conditions" of Section 45 . This establishes that procedural vitiating in the initial stages can act as a total bar to continued detention, even where the double jeopardy threshold has not been formally met.

### **B. Mandatory Document Disclosure and Section 233**

The 2025 ruling in “*Sarla Gupta v. Enforcement Directorate*” significantly expanded the rights of the accused . The Court ruled that the ED is obligated to provide a list of all statements and documents collected during the investigation, including those the agency does *not* intend to rely upon . Given the "reverse burden of proof" under Section 24, the Court held that the opportunity to rebut the presumption of guilt must be fully preserved through absolute transparency in the discovery process.

**C. Recurring Crimes and the Calcutta High Court Intervention**

The 2026 Calcutta High Court decision in “*Basudeb Bagchi & Anr vs. Enforcement Directorate*” provides a cutting-edge analysis of Article 20(2) in the context of persistent layering . The petitioners challenged a second arrest for an investigation that began in 2016, alleging double jeopardy. The Court rejected this, holding that if the accused utilized their previous liberty to generate *fresh* proceeds or engage in *new* layering post-2016, these constitute disjunctive offenses . The Court emphasized that Article 20(2) is a "shield for the innocent" and not a "license for prospective criminality" during a pending investigation .

**VI. Investigative Asymmetry: The "Police Officer" Debate**

A central tension in PMLA jurisprudence is the "procedural inequality" between standard police investigations and ED inquiries. The Supreme Court maintains that ED officers are not "police officers," which exempts them from the Evidence Act's rigors and allows statements made under Section 50 to be admissible in trial .

| Feature        | Police Investigation (BNSS/CrPC)         | ED PMLA Inquiry                        |
|----------------|--|--|
| Summons        | Rights against self-incrimination apply. | Mandatory appearance; Sec 50 penalty . |
| Confessions    | Inadmissible to police officers .        | Admissible if not coerced/compelled .  |
| Arrest Grounds | Immediate notice (Art 22) .              | Must be in writing at time of arrest . |
| Transparency   | Copy of FIR is mandatory .               | ECIR is an "internal document" .       |

The Supreme Court is currently reviewing these distinctions in petitions led by “*Karti P. Chidambaram v. Enforcement Directorate*” . A reversal on the "police officer" status would fundamentally alter how "identity of offense" is viewed, potentially merging the standards of evidence between the predicate trial and the laundering trial .

## **VII. Conclusion: The Evolving Constitutional Framework**

“The doctrine of double jeopardy under Article 20(2)” remains a limited restraint in the face of the PMLA’s “continuing offense” fiction and “standalone” status. However, the 2024–2026 jurisprudential trajectory suggests that the “Principle of Automatic Collapse” and the fair trial mandates of Article 21 are filling the protective void .

The future of economic crime law in India will likely be defined by the tension between “Economic Sovereignty”-the state's need to seize ill-gotten wealth-and “Individual Liberty.” While an accused may face two trials for related facts, the evolving requirement for absolute procedural transparency (*Sarla Gupta*) and the mandate that PMLA trials remains subservient to the merits of the predicate offense (*Pavana Dibbur*) offer a new, more robust constitutional framework for the years ahead.

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