DUAL PROSECUTION IN INDIA: THE INTERPLAY BETWEEN CBI INVESTIGATIONS, ED PROSECUTIONS UNDER THE PMLA, AND OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT AND BHARATIYA NYAYA SANHITA, 2023

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ABSTRACT

Corruption and money laundering go hand in hand as types of economic crimes. A corruption allegation in India can lead to an investigation by the Central Bureau of Investigation (CBI), whereas suspected laundering of the proceeds of crime can result in investigations by the Enforcement Directorate (ED) under the Prevention of Money Laundering Act, 2002 (PMLA). Such parallel proceedings raise issues of statutory jurisdiction, connection with a scheduled offence, and protection of persons accused of money laundering.

This paper discusses the legal regime in the context of concurrent CBI and ED cases involving alleged corruption under the Prevention of Corruption Act, 1988, and offences under the Bharatiya Nyaya Sanhita, 2023 (BNS). It examines the different elements and characteristics of corruption and money-laundering offences, the consequences of proceedings involving both investigations, and the impact of discharge or acquittal in the predicate offence on the PMLA case. It also takes into account the prohibition of double jeopardy and protection against arbitrary deprivation of liberty, as stated in Articles 20(2) and 21 of the Constitution.

The paper also highlights the shift from the Indian Penal Code, 1860, to the BNS and the implications of this shift in relation to the determination of scheduled offences under the PMLA. It argues that parallel proceedings are acceptable if each agency acts within its statutory powers and the elements of each offence are separately established. The independent nature of money laundering does not, however, negate the requirement that alleged proceeds of crime be linked to criminal activity relating to a scheduled offence. An approach should thus reconcile the requirements of enforcement with the need for a statutory foundation, fairness in the application of the law, and judicial review.

Keywords: Money Laundering; Enforcement Directorate; Central Bureau of Investigation; Prevention of Money Laundering Act, 2002; Prevention of Corruption Act, 1988; Bharatiya Nyaya Sanhita, 2023; Predicate Offence; Parallel Prosecution; Double Jeopardy; Constitutional Safeguards.

1. Introduction

Corruption and money laundering are tightly intertwined types of economic crimes. Corruption frequently creates illicit monetary gains, while money-laundering activities relate to handling the proceeds of crime in a manner that masks their illegal source. These offences can be investigated and prosecuted by two different agencies in India: the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED). The CBI investigates corruption-related cases, while the ED investigates money-laundering cases under the Prevention of Money Laundering Act, 2002 (PMLA).[1] The different proceedings may arise from the same transaction, thus raising issues of investigative jurisdiction, prosecutorial independence, and procedural fairness.

The laws regulating these proceedings are the PMLA, the Prevention of Corruption Act, 1988, and the Bharatiya Nyaya Sanhita, 2023 (BNS). The Prevention of Corruption Act is a law that criminalises certain types of public-sector corruption, such as bribery and criminal misconduct by public servants. General criminal offences that might accompany corruption allegations, such as criminal conspiracy, cheating, and forgery, are also included in the BNS. If the alleged crime generates proceeds of crime that fall within the scope of the PMLA, the ED may start a separate investigation and prosecution.[2] The parallel proceedings arise from the different purposes of the statutes involved. A corruption prosecution aims to prove the criminality of the underlying wrong. A money-laundering prosecution is concerned with the processes and activities relating to money laundering. The two proceedings can be based on the same facts and evidence, but they do not necessarily involve the same legal ingredients.[3] Thus, the mere existence of a CBI case does not automatically establish money laundering, and the initiation of a PMLA investigation does not automatically establish the commission of the underlying

[1] The Delhi Special Police Establishment Act, 1946, Secs. 2–3; Prevention of Money-Laundering Act, 2002, Secs. 3–4.
[2] Prevention of Corruption Act, 1988, Secs. 7, 7A, 13; Bharatiya Nyaya Sanhita, 2023, Secs. 61, 318, 335–336; Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3.
[3] Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3; Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.

offence.

This connection can be understood from the Supreme Court's ruling in *Vijay Madanlal Choudhary v. Union of India*. While explaining the connection between the scheduled offence from which the proceeds of crime are derived, the Court identified money laundering as a separate offence under the PMLA. The judgment also shed light on the regulatory regime under which the ED conducts investigations and takes enforcement measures. Its reasoning provides the basis for considering the lawful functioning of parallel proceedings and the consequences of the closure of the underlying criminal case.

Where the predicate offence involves public servants, government contracts, disproportionate assets, or the alleged diversion of public funds, the relationship between the two agencies becomes particularly significant. In those cases, the CBI can investigate the original allegations of corruption, while the ED follows the trail of suspected proceeds, identifies connected property, and examines whether a violation of Section 3 of the PMLA has taken place. The resulting proceedings may involve separate arrest powers, evidentiary requirements, special courts, and conditions for bail.[4] However, the existence of distinct offences does not remove the need for procedural protections. Parallel proceedings can be problematic because (1) the same evidence may be used in more than one proceeding; (2) the accused may be detained for extended periods; and (3) the grounds for the money-laundering charge may become unclear following the conclusion of the predicate case. There must be a careful distinction between legitimate independent prosecutions and those that lack a proper statutory basis.[5]

The constitutional framework is also a key element. Article 20(2) of the Constitution prohibits prosecution and punishment for the same offence more than once, and Article 21 guarantees life and personal liberty through a fair, just, and reasonable procedure established by law. These protections must be applied to the nature of each proceeding, not merely the number of agencies involved. A prosecution for corruption can take place alongside a prosecution for money laundering, but the two do not necessarily concern the same offence.[6] However, their simultaneous operation must remain consistent with constitutional guarantees.

Another challenge is the transition from the IPC, 1860, to the BNS, which came into effect on

[4] Prevention of Money-Laundering Act, 2002, Secs. 5, 19, 44–45; Prevention of Corruption Act, 1988, Secs. 7, 13.
[5] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929; Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244.
[6] INDIA CONST. arts. 20(2), 21; Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.

1 July 2024. Historically, offences under the IPC were covered by the PMLA Schedule, while corresponding offences under the BNS may be relevant to offences committed after its commencement. This shift brings to the fore issues relating to statutory interpretation, the nature of corresponding offences, and the principle of certainty in the limits of criminal responsibility. Such questions are particularly pertinent where the ED relies on a BNS offence as the predicate offence for money-laundering proceedings.[7]

This paper examines the legal relationship between CBI investigations, ED prosecutions, and the underlying offences under the Prevention of Corruption Act and BNS. It analyses the statutory foundations of parallel proceedings, the relationship between predicate offences and money laundering, the effect of acquittal or discharge in the underlying case, and the constitutional safeguards applicable to accused persons. It also considers the implications of the IPC–BNS transition for the PMLA framework. The central argument is that parallel prosecution is legally justified where each agency acts within its statutory authority and the distinct ingredients of the alleged offences are established. However, the independence of PMLA proceedings must not be interpreted as independence from the statutory requirement of identifiable proceeds of crime arising from criminal activity relating to a scheduled offence. A balanced approach should preserve the effectiveness of anti-corruption enforcement while preventing arbitrary, duplicative, or legally unsupported prosecutions.

2. Conceptual and Statutory Framework

2.1 The Prevention of Money Laundering Act, 2002

The PMLA, 2002, is the major law concerning money laundering in India. Its main purpose is to prevent money laundering and provide for the confiscation of property obtained through or connected with money laundering. The Act provides a legal mechanism for the Enforcement Directorate to investigate alleged money-laundering offences and to act against individuals engaging in money-laundering activities related to the proceeds of crime.

The offence of money laundering is contained in Section 3 of the PMLA. It includes participation in processes or activities relating to the proceeds of crime, including concealing, possessing, acquiring, using, and projecting or claiming them as untainted property. The

[7] Bharatiya Nyaya Sanhita, 2023, Sec. 1(2); Ministry of Home Affairs, Notification S.O. 850(E), Gazette of India, 23 February 2024; Prevention of Money-Laundering Act, 2002, Sec. 2(1)(y) & Schedule.

provision is crucial to determining whether the behaviour of an accused person is covered by the definition of money laundering. The presence of property obtained through criminal activity is not enough to prove all the elements of the offence. The prosecution has to prove the necessary link between the accused and the proceeds of crime.[8] Section 2(1)(u) provides that "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence, or the value of such property. This definition sets out the link between money laundering and the underlying offence. The identification of a scheduled offence, therefore, is a key part of determining whether the property in question falls within the statutory definition.[9]

The PMLA also provides powers for the attachment and confiscation of property related to money laundering. Sections 5, 8, and 9 address provisional attachment, adjudication and the effect of attachment, and confiscation, respectively. These provisions are intended to prevent the accused from alienating, transferring, or concealing property that could be subject to confiscation. However, attachment and confiscation must operate within the statutory framework and remain subject to the prescribed procedures.

2.2 The Prevention of Corruption Act, 1988

The Prevention of Corruption Act, 1988, is the major Act of Parliament addressing corruption involving public servants. It aims to ensure that public officials are not bribed and that there is no criminal misuse of their office or other corruption in public life. The Act serves as the legal framework for the investigation and prosecution of public servants and others engaged in certain forms of corruption.[10] Section 7 addresses offences relating to public servants being bribed. It makes the obtaining or accepting of an undue advantage by a public servant in connection with the performance of public duties an offence. Section 7A concerns obtaining an undue advantage to influence a public servant by corrupt or illegal means or by exercising personal influence. Section 13 deals with criminal misconduct by a public servant, including specified forms of misappropriation and illicit enrichment.

Proceeds of crime generated from corruption offences may be the subject of PMLA

[8] Prevention of Money-Laundering Act, 2002, Sec. 3; Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.
[9] Prevention of Money-Laundering Act, 2002, Sec. 2(1)(u); Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.
[10] Prevention of Corruption Act, 1988, Secs. 2(c), 7, 7A, 13.

proceedings. Where a public servant allegedly obtains an undue advantage in exchange for carrying out an official act, the money received may constitute property derived from criminal activity relating to a scheduled offence. The accused may then engage in activities contemplated under Section 3 of the PMLA, and a separate money-laundering case may be initiated.[11]

Thus, the relationship between the two Acts is important. The Prevention of Corruption Act targets corruption, while the PMLA targets activities relating to the proceeds of corruption. Their aims are related, but the ingredients of their offences are different.

2.3 The Bharatiya Nyaya Sanhita, 2023

The Indian Penal Code, 1860, was replaced by the Bharatiya Nyaya Sanhita, 2023, with effect from 1 July 2024. It provides a general framework of criminal offences in India and may apply to conduct surrounding money laundering and corruption. In addition to the Prevention of Corruption Act, general offences under the BNS may also arise from the same transaction.[12]

Some examples of how this may be relevant include criminal conspiracy under Section 61, cheating under Section 318, and forgery-related offences under Sections 335 and 336, where the alleged corruption involves coordinated actions, fraudulent representations, or forged documents. These offences may form part of the underlying criminal activity if the statutory requirements are met.[13] The BNS is also relevant to the PMLA because the Schedule lists offences that may qualify as scheduled offences. The transition from the IPC to the BNS raises questions regarding corresponding offences and the application of the PMLA to offences committed after the commencement of the BNS. The determination of whether a BNS offence qualifies as a scheduled offence must be based on the relevant statutory provisions and judicial interpretation and cannot be made on the assumption that all BNS offences are automatically scheduled.

2.4 How the Three Statutes Are Related

The PMLA complements the BNS and the Prevention of Corruption Act in cases involving

[11] Prevention of Money-Laundering Act, 2002, Secs. 3, 5, 8, 9 & Schedule; Prevention of Corruption Act, 1988, Secs. 7, 7A, 13.
[12] Bharatiya Nyaya Sanhita, 2023, Sec. 1(2); Ministry of Home Affairs, Notification S.O. 850(E), Gazette of India, 23 February 2024.
[13] Bharatiya Nyaya Sanhita, 2023, Secs. 61, 318, 335–336.

alleged corruption and its proceeds. Other criminal conduct relating to the same transaction may be prosecuted under the BNS, while the Prevention of Corruption Act may establish the underlying corruption offence. The PMLA can then apply if the offence generates proceeds of crime and the accused engages in activities covered by Section 3.[14] This relationship may lead the CBI and ED to investigate different aspects of the same alleged criminal activity. The CBI might focus on establishing the underlying offence, identifying the persons involved, and collecting evidence of corruption. The ED could concentrate on tracing the proceeds of crime, following the money trail, identifying property linked to the alleged offence, and determining whether the accused engaged in money laundering.

The law does not require the proceedings to be identical or entirely dependent on one another. Each agency must establish the legal requirements of the offence within its jurisdiction. However, the PMLA cannot be invoked without establishing the necessary link to criminal activity relating to a scheduled offence. It is therefore crucial to differentiate the underlying offence from the subsequent handling of its proceeds in order to understand the legal basis and boundaries of parallel prosecution.[15]

3. Institutional Roles of the CBI and ED

3.1 The Central Bureau of Investigation

The CBI is one of the major investigating agencies in India and investigates corruption, economic crimes, and other serious crimes within its jurisdiction. It is especially significant in corruption investigations involving public servants, government officials, or public money. The CBI investigates offences under the Prevention of Corruption Act, 1988, and other relevant criminal laws, including the BNS. The CBI has been vested with investigative powers mainly under the Delhi Special Police Establishment Act, 1946. The Central Government may establish a special police force under Section 2 of the Act for the investigation of certain offences. The Central Government may designate the offences or classes of offences to be investigated by that force under Section 3. The exercise of police powers is subject to the statutory requirements regarding consent under Section 6, except where a lawful exception or

[14] Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3 & Schedule; Prevention of Corruption Act, 1988, Secs. 7, 7A, 13; Bharatiya Nyaya Sanhita, 2023, Secs. 61, 318, 335–336.
[15] Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3; Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.

judicial direction applies.[16]

In cases of corruption, the CBI may register a First Information Report, gather documentary and electronic evidence, examine witnesses, conduct searches and seizures, and investigate the involvement of public servants as well as private individuals. After the investigation, it may file a charge-sheet before the competent court if sufficient evidence is available. Its objective is to determine whether the alleged conduct constitutes a criminal offence and whether the accused individuals can be prosecuted under the relevant statute. The CBI's investigation can also uncover financial transactions, properties, bank accounts, and other assets suspected of being acquired through corruption. This information could become relevant to the ED if the alleged criminal activity generates proceeds of crime within the meaning of the PMLA. Hence, the investigation by the CBI could be a valuable source of information for the money-laundering investigation.[17]

3.2 The Enforcement Directorate

The Enforcement Directorate is the central agency responsible for enforcing the PMLA and certain other economic laws. It is specifically involved in corruption-related cases, with an emphasis on the laundering of money derived from scheduled offences. The CBI investigates the underlying corruption or other offence, while the ED investigates the proceeds of crime and activities related to them. Under the PMLA, the ED has powers to investigate money laundering, provisionally attach property, conduct searches and seizures, and prosecute persons alleged to have committed the offence under Section 3 of the PMLA. The agency may also examine the ownership, transfer, concealment, and use of property that it suspects is related to a scheduled offence.[18]

Typically, an ED investigation includes a review of financial transactions, bank statements, property documents, company transactions, and electronic evidence. It may trace money through several accounts or entities to determine whether the property constitutes proceeds of crime and whether the accused was involved in activities covered by Section 3. The ED can seek provisional attachment of property under Section 5 of the PMLA if the statutory

[16] Delhi Special Police Establishment Act, 1946, Secs. 2, 3, 6.
[17] Bharatiya Nagarik Suraksha Sanhita, 2023, Sec. 193; Prevention of Corruption Act, 1988, Secs. 7, 7A, 13.
[18] Prevention of Money-Laundering Act, 2002, Secs. 5, 17, 18, 19.

requirements are fulfilled.

The ED may also file a complaint before the Special Court established under the PMLA. The prosecution has to prove the elements of the money-laundering offence, including the connection between the alleged conduct and the proceeds of crime. The mere pendency of a corruption case does not make the accused liable under the PMLA.[19]

3.3 Coordination between the CBI and ED

The CBI and ED may investigate different aspects of the same alleged criminal transaction. For instance, if a public servant is accused of taking a bribe in exchange for awarding a government contract, the CBI may investigate the alleged bribery and identify the persons involved. The ED may independently investigate whether the sum received by the accused constitutes proceeds of crime and whether the accused subsequently concealed, possessed, transferred, or used property in a manner prohibited by Section 3 of the PMLA.[20]

This coordination can include the exchange of relevant information, the review of financial records, and the identification of assets linked to the alleged crime. The agencies may also use evidence gathered during the other agency's investigation, subject to the applicable rules of evidence and procedure. However, each agency must meet its own legal requirements for investigation and prosecution. There is no implication that the relationship between the agencies makes the ED an extension of the CBI or that the CBI must establish all the elements of money laundering. They have distinct statutory duties. The CBI investigates the underlying crime, while the ED investigates offences relating to the proceeds of crime. This distinction is important for maintaining the independent legal nature of each offence.

3.4 Limits on Investigative and Prosecutorial Powers

Both agencies have extensive investigative powers, but their powers are limited by statute and the Constitution. The CBI is required to act within its jurisdiction and follow the applicable procedures for investigation, search, seizure, and prosecution. Similarly, the ED must have a statutory basis for its actions under the PMLA and comply with the safeguards governing attachment, arrest, investigation, and prosecution. The exercise of investigative powers should

[19] Prevention of Money-Laundering Act, 2002, Secs. 3, 44, 45; Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.
[20] Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3; Prevention of Corruption Act, 1988, Sec. 7.

also be consistent with Article 21 of the Constitution, which protects the right to life and personal liberty. An accused person is entitled to a fair, just, and reasonable procedure when accused of corruption or money laundering. The seriousness of economic offences does not justify disregarding the requirements of lawful investigation or judicial scrutiny.[21]

Thus, the distinction between the CBI and ED is essential to understanding parallel prosecution. Each agency operates under its own statutory powers and must establish the ingredients of the offence it prosecutes. This framework enables the State to investigate corruption and the proceeds of such corruption while maintaining safeguards against arbitrary or unsubstantiated prosecution.

4. The Relationship between Predicate Offences and PMLA Prosecution

4.1 The Meaning and Importance of a Predicate Offence

A predicate offence, also referred to as a scheduled offence under the Prevention of Money Laundering Act, 2002 (PMLA), is the criminal activity from which proceeds of crime are derived or obtained. Establishing such an offence is critical to the legality of a money-laundering prosecution. The PMLA does not treat every illegal financial transaction as money laundering. There must be a connection with criminal activity relating to an offence listed in the Schedule to the Act.[22] Section 2(1)(u) of the PMLA defines "proceeds of crime" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence, or the value of such property. This definition establishes the connection between the original crime and the property alleged to be involved in money laundering. The prosecution must identify the scheduled offence and establish the link between that criminal activity and the property alleged to be proceeds of crime.[23]

In corruption cases, the predicate offence may arise under the Prevention of Corruption Act, 1988. For example, if a public servant accepts a bribe in connection with the performance of an official duty, the money received may constitute proceeds of crime if the statutory requirements are satisfied. The Enforcement Directorate (ED) may then investigate and prosecute money laundering if the accused engages in conduct covered by Section 3 of the

[21] INDIA CONST. art. 21; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[22] Prevention of Money-Laundering Act, 2002, Secs. 2(1)(y), 3 & Schedule; Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.
[23] Prevention of Money-Laundering Act, 2002, Sec. 2(1)(u).

PMLA.[24]

4.2 Money Laundering as a Separate Offence

Money laundering is defined as a separate offence from the scheduled offence. The underlying corruption offence and the subsequent conduct involving its proceeds have different legal ingredients. The Prevention of Corruption Act addresses corrupt acts, while Section 3 of the PMLA addresses involvement in processes or activities connected with proceeds of crime. In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court explained the relationship between the scheduled offence and the offence of money laundering. The Court recognised that money laundering is a distinct offence, but its existence depends on criminal activity relating to a scheduled offence and the generation of proceeds of crime. This distinction allows the ED to investigate and prosecute money laundering separately from the investigation and prosecution of the underlying offence.[25]

However, the independent nature of the PMLA offence does not allow the ED to disregard the requirement of a scheduled offence. The prosecution must still establish that the property constitutes proceeds of crime and that the accused engaged in conduct falling within Section 3. The independence of the offence concerns its distinct legal ingredients and prosecution; it does not remove its statutory foundation.

4.3 The Impact of Discharge or Acquittal in the Predicate Offence

A fundamental issue in parallel prosecutions is the effect of discharge or acquittal in the underlying criminal proceedings on the PMLA case. If the predicate offence is terminated, the basis for treating the property as proceeds of crime may also be affected. This is particularly important where the alleged money laundering is based solely on the criminal activity that has been terminated. In *Vijay Madanlal Choudhary*, the Supreme Court held that where a person is finally discharged or acquitted of the scheduled offence, or the proceedings relating to that offence are quashed, there can be no proceeds of crime in relation to that scheduled offence and, consequently, no money-laundering offence based on those proceeds.[26]

[24] Prevention of Corruption Act, 1988, Sec. 7; Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3.
[25] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929; Prevention of Money-Laundering Act, 2002, Sec. 3.
[26] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.

The effect of termination must nevertheless be assessed in light of the facts and the legal basis of the proceedings. Where there are multiple predicate offences or different sources of proceeds of crime, the termination of one predicate offence does not necessarily bring the entire PMLA case to an end. The relevant question is whether the prosecution can still establish proceeds of crime arising from another scheduled offence.

4.4 Evidence Requirements in PMLA Cases

In a PMLA case, the prosecution must establish the ingredients of the offence under Section 3. This includes identifying the property in question and establishing its necessary connection with criminal activity relating to a scheduled offence. Evidence may include financial records, bank statements, property documents, electronic communications, and other materials showing the movement, possession, use, or concealment of the alleged proceeds of crime.

Section 24 of the PMLA provides for a statutory presumption concerning proceeds of crime in specified circumstances. Where a person is accused of money laundering under Section 3, the burden of proving that the proceeds of crime are untainted property may lie upon that person, subject to the provision's terms. This presumption does not eliminate the prosecution's obligation to establish the foundational facts necessary for its application.[27] These evidentiary requirements are important because financial transactions may have legitimate explanations. Mere ownership of property or participation in a financial transaction does not, by itself, establish money laundering. The prosecution must demonstrate the statutory connection between the property, the scheduled offence, and the accused's conduct.

4.5 The Limits of Parallel Prosecution

The relationship between predicate offences and PMLA proceedings demonstrates both the need for and the limits of dual prosecution. The ED operates independently of the CBI's investigation into corruption and has its own statutory powers to investigate proceeds of crime. At the same time, the PMLA cannot be applied to conduct that lacks the required connection with a scheduled offence and proceeds of crime.

The law must therefore remain both effective and fair. Independent money-laundering proceedings enable the State to address the financial consequences of corruption. However, the

[27] Prevention of Money-Laundering Act, 2002, Secs. 3, 24.

statutory requirements concerning scheduled offences and proceeds of crime remain essential. This distinction ensures that parallel prosecution serves its legitimate purpose without exceeding the limits imposed by law.

5. Parallel Prosecution, Double Jeopardy, and Constitutional Safeguards

5.1 The Constitutional Protection against Double Jeopardy

Concurrently investigating and prosecuting instances of corruption and money laundering raises the question of whether a person can be prosecuted twice for the same offence. Under Article 20(2) of the Indian Constitution, no person shall be prosecuted and punished for the same offence more than once. However, this protection does not automatically prevent separate proceedings arising from the same transaction. It applies where a person has already been prosecuted and punished for the same offence. The main question is whether the two proceedings are directed at the same offence or at different offences with different legal ingredients. In *State of Bombay v. S.L. Apte*, the Supreme Court explained that the test is not merely the similarity of facts but whether the essential ingredients of the offences are the same. This principle applies to PMLA prosecutions because predicate offences and money laundering may arise from the same circumstances, while the elements required to prove each offence are different.[28]

In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court reiterated that money laundering under Section 3 of the PMLA is a separate offence based on processes or activities relating to proceeds of crime. Therefore, prosecuting an accused under the PMLA is not, in itself, a breach of Article 20(2) when the accused is also prosecuted under the Prevention of Corruption Act for the underlying offence.[29]

5.2 Distinct Offences and Separate Prosecution

The PMLA and the Prevention of Corruption Act address different aspects of unlawful activity. The latter criminalises specified forms of corruption, including a public servant taking undue advantage. The PMLA governs participation in processes or activities related to proceeds of crime, such as concealing, possessing, acquiring, or using such proceeds, or projecting them as

[28] State of Bombay v. S.L. Apte, AIR 1961 SC 578.
[29] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929; Prevention of Money-Laundering Act, 2002, Sec. 3.

untainted property.[30]

In *Leo Roy Frey v. Superintendent, District Jail*, the Supreme Court recognised that different offences may arise from the same facts where their legal ingredients differ. This principle supports the distinction between acquiring proceeds through corruption and engaging in subsequent activities involving those proceeds.[31] Likewise, in *Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao*, the Court considered the statutory bar on a second prosecution and the need to determine whether the subsequent prosecution was for the same offence. The case highlights the importance of the nature of the offence, rather than general similarities between the proceedings, in the double-jeopardy inquiry.[32]

In this context, parallel prosecution under the Prevention of Corruption Act and the PMLA is generally possible where each prosecution has distinct legal ingredients. However, the State cannot continue a separate prosecution for the same offence where the statutory bar against a second prosecution applies following a prior conviction or acquittal.

5.3 Procedural Safeguards in PMLA Investigations

The independence of a PMLA investigation does not justify removing constitutional and legal safeguards from the ED's investigation. Arrest, investigation, and prosecution must be conducted in accordance with the standards of fairness and due process under Article 21.[33] In *Pankaj Bansal v. Union of India*, the Supreme Court held that the grounds of arrest under Section 19 of the PMLA must be provided to the arrested person in writing. This requirement helps the accused understand the reasons for the arrest and challenge its legality. In cases involving parallel investigations, this protection is particularly important where proceedings have also been initiated by the CBI or another agency.[34]

The Court's ruling in *V. Senthil Balaji v. State* also highlighted that statutory powers of arrest must be exercised in compliance with the safeguards provided by law. An investigation into a scheduled offence does not, by itself, authorise arrest under the PMLA without compliance

[30] Prevention of Corruption Act, 1988, Secs. 7, 7A, 13; Prevention of Money-Laundering Act, 2002, Sec. 3.
[31] Leo Roy Frey v. Superintendent, District Jail, AIR 1958 SC 119.
[32] Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao, (2011) 2 SCC 703.
[33] INDIA CONST. art. 21; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[34] Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244; Prevention of Money-Laundering Act, 2002, Sec. 19.

with Section 19.[35]

5.4 Fair Trial and Prolonged Detention

Parallel proceedings can create significant procedural burdens. The accused may face separate investigations, voluminous documents, numerous prosecution witnesses, and lengthy trials. These circumstances raise concerns about the right to a fair and speedy trial guaranteed under Article 21.[36] In *Manish Sisodia v. Directorate of Enforcement*, the Supreme Court emphasised that the length of custody and delay in trial are relevant factors in deciding bail, including in cases involving economic offences. The Court stressed that the restrictions on bail under Section 45 of the PMLA cannot defeat the constitutional right to a speedy trial.[37]

This principle is important where there is substantial overlap in evidence and numerous witnesses in the CBI and ED proceedings. The gravity of the offence is relevant, but it does not excuse a failure to provide a fair and timely trial.

5.5 Ensuring Fair and Effective Parallel Proceedings

Parallel proceedings serve a legitimate purpose where proceeds are generated through corruption and are subsequently concealed, possessed, used, or claimed as legitimate property. The CBI and ED may investigate different aspects of the same transaction, and their proceedings need not always be combined. However, agencies and courts must ensure that separate proceedings remain within their statutory limits. The prosecution must independently prove the ingredients of each offence, and the accused must retain the protections guaranteed by the Constitution and applicable criminal procedure.[38]

A system of parallel proceedings therefore requires coordination between investigating agencies, careful judicial management of overlapping evidence, and attention to the duration of proceedings. These safeguards help ensure the effectiveness of anti-corruption and anti-money-laundering laws without allowing their use in ways that violate personal liberty and the right to a fair trial.

[35] V. Senthil Balaji v. State, (2024) 3 SCC 51; Prevention of Money-Laundering Act, 2002, Sec. 19.
[36] INDIA CONST. art. 21; Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.
[37] Manish Sisodia v. Directorate of Enforcement, 2024 INSC 595; Prevention of Money-Laundering Act, 2002, Sec. 45.
[38] Prevention of Money-Laundering Act, 2002, Secs. 3, 44; INDIA CONST. arts. 20(2), 21.

6. Coordination between the CBI and ED and the Challenges of Parallel Proceedings

6.1 The Need for Coordination between Investigating Agencies

The CBI and the ED proceed under different statutory provisions. The ED deals with offences under the PMLA concerning the alleged generation and handling of proceeds of crime, while the CBI investigates the scheduled offence. Although they investigate different offences, they may deal with the same persons, witnesses, financial transactions, and documents.

Coordination is necessary to prevent duplication of efforts and ensure that investigations conform to the law. The CBI may generate relevant evidence for the ED, but the burden of proving the ingredients of money laundering rests on the ED itself. A CBI case does not automatically establish an offence under Section 3 of the PMLA. In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court clarified the distinction between the money-laundering offence and the scheduled offence, while recognising that money laundering requires a connection with a scheduled offence and proceeds of crime. This distinction requires cooperation between the two agencies, without allowing either agency to replace the other in its investigation.[39]

6.2 Statutory Framework for Trial Coordination

The PMLA regulates the trial of money-laundering offences and scheduled offences through Section 44. Section 44(1)(c) provides that where the Special Court has taken cognizance of the money-laundering offence, it may also try the connected scheduled offence, subject to the statutory conditions. The provision aims to facilitate the adjudication of related offences within an orderly trial process.[40] In *Rana Ayyub v. Directorate of Enforcement*, the Supreme Court discussed the procedure under Section 44 and explained that the scheduled offence may need to be committed to the Special Court dealing with the PMLA complaint. The judgment clarifies the relationship between the trials and the role of the Special Court in ensuring that connected proceedings are conducted in accordance with the Act.[41]

However, the possibility of coordinating CBI and PMLA cases does not mean that every CBI case and every PMLA case must be combined. The statutory requirements and the

[39] *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929.
[40] Prevention of Money-Laundering Act, 2002, Sec. 44(1)(a)–(c).
[41] *Rana Ayyub v. Directorate of Enforcement*, 2023 SCC OnLine SC 109.

circumstances of each case must be considered. The objective is to facilitate an orderly trial while preserving the distinct ingredients of each offence.

6.3 Overlapping Evidence and Risk of Inconsistent Findings

One of the most difficult problems in parallel proceedings is the use of common evidence relevant to both the alleged money laundering and the predicate offence. Bank statements, property records, electronic communications, and witness testimony may be relevant to both cases. Separate proceedings may result in repeated examination of witnesses and repeated production of the same documents.

This overlap may also create a risk of inconsistent findings. For instance, the court hearing the scheduled offence may reach a conclusion that differs from that of the court hearing the PMLA case. Such inconsistency can undermine confidence in the administration of justice and create difficulties in determining whether the property constitutes proceeds of crime. In *M. Venkatesan v. Enforcement Directorate*, the Madras High Court considered concerns relating to the timing and coordination of trials involving the scheduled offence and money laundering. The case illustrates the challenges that arise when related proceedings move separately and the need to consider fairness and potential prejudice to the parties.[42]

6.4 Independent Investigation and Evidentiary Responsibility

Coordination should not compromise the independent role of either agency. The CBI must prove the ingredients of the scheduled offence, while the ED must establish that the property constitutes proceeds of crime and that the accused engaged in conduct covered by Section 3 of the PMLA.[43]

In *Rana Ayyub*, the Supreme Court highlighted the statutory procedure governing the relationship between the scheduled offence and the PMLA case. This further demonstrates the importance of agencies and courts observing the specific law applicable to each proceeding.

The ED may use relevant information gathered during the predicate investigation, subject to the applicable rules of evidence. However, it must establish the necessary connection between

[42] *M. Venkatesan v. Directorate of Enforcement*, Crl. O.P. No. 7578 of 2023 (Madras High Court, Nov. 25, 2024).
[43] Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3; Bharatiya Sakshya Adhiniyam, 2023.

the property and the scheduled offence. The accused must also be afforded a fair opportunity to challenge the evidence relied upon in each prosecution.

6.5 Preventing Delay and Procedural Prejudice

Prolonged parallel proceedings may result when both agencies continue gathering evidence while trials are pending. Delays may affect the accused's right to a speedy trial and may also weaken the prosecution's ability to present its case. In *Manish Sisodia v. Directorate of Enforcement*, the Supreme Court recognised that prolonged incarceration and delay in trial are relevant factors in deciding bail, including in PMLA cases. This principle applies where the accused faces lengthy proceedings arising from the same factual circumstances.[44]

Courts should therefore assess the volume of evidence, the extent of overlap between the cases, and the possibility of prejudice caused by separate trials. Where appropriate, coordinated trials should be undertaken through the statutory mechanisms. However, coordination should not prevent proceedings from moving forward indefinitely.

6.6 Towards Effective and Fair Coordination

Effective coordination between the agencies requires proper identification of the scheduled offence, the alleged proceeds of crime, and the distinct conduct attributed to each accused. Unnecessary duplication in evidence collection should be avoided, and allegations in each proceeding should remain consistent with the statutory requirements.

The Special Court has an important role in managing related proceedings, preventing unnecessary delay, and protecting the accused's right to a fair trial. The objective is not to combine the two offences, but to ensure that the legal requirements of each are addressed coherently.[45]

Therefore, coordination is necessary for the effective prosecution of corruption and money laundering. It can minimise duplication, procedural prejudice, and inconsistent findings while preserving the independence of each investigation. A balanced approach strengthens enforcement and safeguards fairness and personal liberty as guaranteed by the Constitution.

[44] *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595.
[45] Prevention of Money-Laundering Act, 2002, Sec. 44 and Explanation (i).

7. Challenges and Legal Concerns in Dual Prosecution

7.1 Overlapping Investigations and Duplication of Proceedings

Overlap in CBI and ED investigations is one of the major problems faced in dual prosecution. The same transactions may be reviewed and investigated by both agencies, the same documents may be reviewed and collected by both agencies, and the same testimony may be obtained by both agencies. This similarity can cause undue duplication and increase the burden on the accused, for different legal reasons. The CBI investigates the scheduled offence, while the ED's investigation is directed towards the proceeds of crime and related activities. If both agencies have the same financial records and witness statements, it can, however, prove challenging to maintain separate investigations in practice. This can also result in repeated questioning and delays.

Just because there is duplication, it does not mean parallel proceedings are themselves unlawful. Agencies would, however, be required to give a clear indication of the purpose of their investigation and not gather evidence without a valid reason. Good coordination can help decrease redundancies while maintaining the independent role of each agency.

7.2 Broad Investigative Powers and Personal Liberty

The PMLA empowers the ED with many powers in connection with money laundering, including search, seizure, arrest, and attachment of property. These powers are used to stop the concealment and transfer of criminal proceeds. However, their use could impact the freedom and property rights of individuals. Under Article 21 of the Constitution, the deprivation of personal liberty must be in accordance with a law that establishes a fair, just, and reasonable procedure. The Supreme Court in *Pankaj Bansal v. Union of India* ruled that the grounds of arrest under Section 19 of the PMLA should be provided in writing. This ensures that the arrested person knows the grounds for the arrest and is better equipped to challenge its legality in court.[46]

The need for precautions is heightened when a person is already undergoing investigation by the CBI. An investigation should not be used to avoid the lawful arrest procedure or to

[46] *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1244; INDIA CONST. art. 22(1); Prevention of Money-Laundering Act, 2002, Sec. 19.

unnecessarily restrict the powers of investigation available to the police or other investigative bodies.

7.3 Attachment of Property and the Rights of Third Parties

The attachment of property under the PMLA can impact not only the accused and their family members but also their business partners, lenders, and other third parties. Property can be attached under the conditions laid down in the Act if the authorities have reason to believe that it is proceeds of crime or is involved in money laundering.

The link between the property and the alleged offence must, however, be established under the Act. Absent other evidence, the connection between a person and the accused is not sufficient for the property to be considered proceeds of crime. The rights of individuals who purchased or otherwise lawfully acquired property without knowledge of the crime in question must also be taken into account within the framework of the law. The Supreme Court in *Vijay Madanlal Choudhary v. Union of India* analysed the attachment and confiscation provisions of the PMLA. The case emphasises the need to enforce the Act in line with its requirements and to establish the necessary link between the property and criminal activity relating to a scheduled offence.[47]

7.4 Prolonged Trials and the Right to a Speedy Trial

In many circumstances, dual prosecution may result in lengthy proceedings, especially in cases handled by the CBI and ED where many financial documents and witnesses are involved. The accused may remain detained while both categories of proceedings are pending, giving rise to serious concerns about the right to a speedy trial guaranteed under Article 21.[48] In *Manish Sisodia v. Directorate of Enforcement*, the Supreme Court drew attention to the fact that delay and extended incarceration are relevant factors in deciding bail. The Court observed that the restrictions under Section 45 of the PMLA cannot be applied in a manner that infringes the constitutional right to a speedy trial.[49]

This principle is of great importance because no economic offence justifies indefinite custody

[47] *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929; Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 5, 8.
[48] INDIA CONST. art. 21; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.
[49] *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595; Prevention of Money-Laundering Act, 2002, Sec. 45.

without trial. The courts need to take into account the progress of the proceedings, the expected timeframe of the trial, and whether continued custody is warranted.

7.5 Risk of Inconsistent Judicial Findings

If the predicate offence and the PMLA case are heard by two different courts, the same evidence may be presented and the conclusions may differ. For instance, one court may find that the prosecution has not established the source of certain funds, while another court could rule that those funds are proceeds of crime. These disparities can cause uncertainty and difficulties in the administration of justice. Section 44 of the PMLA provides for the trial of connected offences in certain circumstances. This process may minimise contradictory results and unnecessary duplication.[50]

Coordinated trials will, however, have to take account of the separate elements of each offence. This does not mean that the mere fact of corruption is proof of money laundering, but rather that there should be a fair and coherent consideration of the related allegations.

7.6 Need for a Balanced Approach

Dual prosecution matters because corruption can create proceeds which can later be hidden, moved, or used for the acquisition of property. The CBI has distinct statutory obligations from those of the ED, and both have their own concerns about the same transaction from different legal perspectives.[51]

At the same time, the use of these powers should remain within an acceptable legal framework. Each offence must be established by the prosecution; there must be a legitimate basis for attaching the property; and the accused must be afforded a fair trial within a reasonable time. There is a need for a balanced approach which involves proper allegations, agency coordination, effective judicial oversight, and respect for constitutional safeguards. These measures may help ensure that dual prosecution, while a powerful aid in combating corruption and money laundering, is not unduly burdensome or an infringement of personal liberty.

[50] Prevention of Money-Laundering Act, 2002, Sec. 44(1)(a), (c) and Explanation (i).
[51] Prevention of Money-Laundering Act, 2002, Secs. 3, 4; Delhi Special Police Establishment Act, 1946, Secs. 2, 3.

8. Recommendations for Reform and a More Effective Legal Framework

8.1 Clearer Identification of the Scheduled Offence and Proceeds of Crime

A crucial element in gaining clarity about dual prosecution is to precisely define the scheduled offence and what is considered property connected to the crime. The allegations against an accused in some instances may extend to many transactions, companies, and properties. If the alleged connections between these and the scheduled offence are not explained, the accused may have a hard time understanding and responding to the allegations. The ED should clearly state the origin of the proceeds of crime and the alleged actions of each accused in relation to Section 3 of the PMLA. This could prevent the possibility of unclear allegations about why money was being laundered where no laundering occurred. It will also give courts a means to determine whether the statutory requirements are fulfilled.[52]

8.2 Better Coordination between the CBI and ED

The CBI and ED must maintain good coordination in cases where investigations are proceeding in both agencies concerning the same transaction. This does not mean that one agency is supposed to oversee the investigation conducted by the other agency. Each agency should retain its statutory independence and establish the elements of the offence it is charged with investigating. Examples of useful coordination include exchanging relevant information in a lawful manner, preventing unnecessary repetition of witness examinations, and keeping evidence gathered by each agency well documented. If the same documents are used in both proceedings, it is important to carefully handle their collection and use.[53]

This would help minimise duplication and avoid unnecessary delay. It would also help courts understand the connection between the scheduled offence and the alleged money laundering.

8.3 Strengthening Judicial Management of Related Trials

Courts, as an institution, play a critical role in ensuring the fair and efficient conduct of related proceedings. Section 44 of the PMLA deals with money-laundering offences and connected scheduled offences. Using this framework should be considered if it helps minimise duplication

[52] Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3.
[53] Delhi Special Police Establishment Act, 1946, Secs. 2, 3, 6; Prevention of Money-Laundering Act, 2002, Secs. 54, 66.

and the risk of inconsistent findings.[54] However, coordinated trials should not be assumed to be automatic in every instance. Judicial considerations include statutory requirements, the nature of the allegations, and the possibility of prejudice to either party from a joint or coordinated approach. The distinct elements of the offences need to remain clear throughout the proceedings. Judicial management can also keep unnecessary adjournments to a minimum and ensure that overlapping evidence is presented efficiently. This is especially significant when dealing with extensive financial records and numerous witnesses.

8.4 Protecting Personal Liberty and the Right to a Speedy Trial

Anti-money-laundering enforcement cannot be judged solely on the basis of the number of arrests or prosecutions. It also has to be evaluated in terms of adherence to the protections afforded by the Constitution. Article 21 protects personal liberty and the right to a fair and speedy trial.[55] The Supreme Court's judgment in *Manish Sisodia v. Directorate of Enforcement* underscores the need to consider the length of incarceration and delays in the trial process when determining bail. The courts should review the progress made in the case, the expected duration of the trial, and the necessity of further detention.[56] Investigating agencies are also urged to avoid excessive delays in investigations and the filing of complaints. When there is a large amount of evidence, the court process can be prolonged if proper case management and disclosure are not undertaken.

8.5 Safeguarding Property Rights and Third-Party Interests

The attachment of property can have serious implications where an individual is not charged with money laundering. Property ownership may be affected for family members, business associates, lenders, and third parties who claim to have acquired property lawfully. The authorities should therefore identify the property allegedly derived from or connected with the crime and provide reasons for its attachment. The attachment, adjudication, and confiscation provisions of the PMLA must be followed. The claims of affected third parties in adjudicatory proceedings should also be considered in accordance with the PMLA.

A sensible and practical approach to property attachment could reduce unnecessary hardship

[54] Prevention of Money-Laundering Act, 2002, Sec. 44(1)(a), (c) and Explanation (i).
[55] INDIA CONST. art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[56] *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595; INDIA CONST. art. 21; Prevention of Money-Laundering Act, 2002, Sec. 45.

while providing a means to preserve property genuinely connected with criminal activity.

8.6 Improving Transparency and Accountability

Transparency in investigating and prosecuting cases is necessary to sustain public confidence. The accused should be given the procedural safeguards mandated by law, such as written grounds of arrest under Section 19 of the PMLA, as explained in *Pankaj Bansal v. Union of India*.[57] There should be contemporaneous records of the evidence and material relied upon in investigations, and allegations should be supported by evidence. Courts should then review whether the statutory requirements for arrest, attachment, and prosecution have been met. Accountability does not reduce enforcement. Instead, it enhances the legitimacy of the process and fosters the use of investigative powers for their intended purpose.

8.7 A Balanced Approach to Dual Prosecution

The aim of reform should not be to bar the CBI and ED from investigating the same transaction. Corruption can result in proceeds that are hidden, transferred, or used to purchase property. Separate investigations may therefore be required. What is needed is to ensure that parallel proceedings remain lawful, proportionate, and fair. This balance can be achieved through clear allegations, proper coordination between the agencies, efficient trial management, and effective judicial oversight. Dual prosecution will be viable if there is a system that respects both enforcement needs and individual rights. It will enable the State to combat corruption and money laundering without weakening the protections provided by the Constitution because of concurrent investigations.

9. Judicial Developments and Their Impact on Dual Prosecution

Under the Prevention of Money Laundering Act, 2002 (PMLA), the Supreme Court of India has clarified the relationship between a ‘scheduled offence’ and ‘money laundering’, the powers of the Enforcement Directorate (ED), amendments to the PMLA, and the protection of innocent persons. These decisions establish an institutional framework for understanding how CBI investigations and ED prosecutions can proceed together without infringing constitutional

[57] *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1244; INDIA CONST. art. 22(1); Prevention of Money-Laundering Act, 2002, Sec. 19.

limits.[58]

9.1 Vijay Madanlal Choudhary v. Union of India

In *Vijay Madanlal Choudhary v. Union of India* (2022), the Supreme Court upheld the key provisions of the PMLA and interpreted Section 3. The Court explained that money laundering covers processes and activities associated with proceeds of crime and is not limited to the final transaction through which property is projected as untainted.[59] The Court also highlighted the nexus between the scheduled offence and prosecution under the PMLA. The proceeds of crime must arise from criminal activity relating to a scheduled offence. The ED cannot proceed on the assumption that an offence has been committed if the alleged offence is not a scheduled offence. If the accused is finally discharged or acquitted of the scheduled offence, or the scheduled offence is quashed, the basis of the related PMLA case may cease to exist. This decision confirms that the PMLA creates a separate offence, but one that depends on the existence of proceeds of crime associated with a scheduled offence. In this regard, it permits parallel prosecutions while requiring a legal foundation for the money-laundering charge.

9.2 Pankaj Bansal v. Union of India

In *Pankaj Bansal v. Union of India* (2023), the Supreme Court considered the safeguards governing arrest under Section 19 of the PMLA. It ruled that the grounds of arrest must be communicated in writing to the person being arrested. This requirement gives effect to Article 22(1) of the Constitution and enables the accused to challenge the arrest and seek bail effectively.[60] The ruling is important in dual-prosecution cases because an accused may be arrested and detained in both the predicate-offence investigation and the PMLA proceedings. The existence of parallel cases does not diminish the duty of each agency to observe the applicable procedural safeguards. The ED must independently satisfy the statutory conditions for arrest and cannot rely merely on the fact that the CBI has filed an FIR.

[58] Prevention of Money-Laundering Act, 2002, Secs. 3, 44; *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929.
[59] *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929; Prevention of Money-Laundering Act, 2002, Secs. 2(1)(u), 3.
[60] *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1244; INDIA CONST. art. 22(1); Prevention of Money-Laundering Act, 2002, Sec. 19.

9.3 Manish Sisodia v. Central Bureau of Investigation

In *Manish Sisodia v. Central Bureau of Investigation* (2023), the Supreme Court considered bail applications arising from two cases, one initiated by the CBI under the Prevention of Corruption Act and the other by the ED under the PMLA. The Court did not decide the underlying allegations but emphasised the importance of the right to a speedy trial under Article 21.[61] Even in cases involving serious economic offences and restrictive statutory bail conditions, prolonged imprisonment and delay may justify reconsideration of bail. The Court also recognised that Section 436A of the Code of Criminal Procedure may apply to PMLA cases, subject to the statutory requirements.[62] The decision makes clear that parallel prosecution cannot be used to create indefinite detention. Courts must assess the progress of both proceedings and determine whether delay is attributable to the accused or the prosecution.

9.4 Rana Ayyub v. Directorate of Enforcement

In *Rana Ayyub v. Directorate of Enforcement* (2023), the Supreme Court examined the law and procedure governing the filing and prosecution of complaints under the PMLA. The judgment addressed the jurisdiction of the Special Court and the procedure under Sections 44 and 45 of the PMLA.[63] The decision emphasises the importance of complying with the statutory process when an ED complaint is filed and taken cognisance of. Where the predicate offence is also being prosecuted, procedural coordination is necessary to prevent confusion regarding jurisdiction and the appropriate forum. The PMLA cannot be treated as a blanket authority to prosecute; its powers must be exercised in accordance with the statutory procedure.

9.5 A Changing Judicial Approach

Taken together, these decisions reflect a balance between effective enforcement and individual rights. The Supreme Court recognises that money laundering is distinct from the scheduled offence and may require a separate investigation and prosecution. At the same time, the ED must establish the legal link between the proceeds of crime and the scheduled offence, respect the rights of the accused, and ensure a fair and speedy trial while complying with safeguards

[61] *Manish Sisodia v. Central Bureau of Investigation*, 2023 INSC 956.
[62] Code of Criminal Procedure, 1973, Sec. 436A; *Manish Sisodia v. Central Bureau of Investigation*, 2023 INSC 956.
[63] *Rana Ayyub v. Directorate of Enforcement*, 2023 INSC 101; Prevention of Money-Laundering Act, 2002, Secs. 44–45.

governing arrest.[64] Courts must examine the evidence and conduct in both proceedings without assuming that findings in one case automatically determine the other. The judicial approach therefore supports parallel proceedings where legally justified but does not permit procedural safeguards to be disregarded merely because the allegations concern serious economic offences.

10. Conclusion

The relationship between investigations carried out by the Central Bureau of Investigation (CBI) and prosecutions initiated by the Enforcement Directorate (ED) under the Prevention of Money Laundering Act, 2002 (PMLA) offers important insight into the challenges of dealing with economic crimes in India. The proceedings may arise from the same set of facts but serve different legal purposes. The CBI investigates the underlying offences, including offences under the Prevention of Corruption Act, 1988 and the Bharatiya Nyaya Sanhita, 2023, while the ED investigates processes and activities connected with the proceeds of crime. Such proceedings may lawfully take place simultaneously. The legality of dual prosecution, however, depends on preserving the distinction between the offences, establishing the legal requirements applicable to each prosecution, and safeguarding the constitutionally protected rights of the accused.

The analysis in this paper demonstrates that money laundering is a separate offence, but it is not completely independent of the underlying scheduled offence. A key part of a PMLA prosecution is establishing that the proceeds of crime resulted from criminal activity relating to a scheduled offence. The ED must establish this statutory link through legally admissible evidence. The registration of an FIR or a CBI investigation does not, by itself, prove money laundering. Likewise, the filing of a PMLA complaint does not prove the underlying corruption offence or any other scheduled offence. Each agency must establish the ingredients of the offence within its jurisdiction.

There is an important distinction between the two proceedings, which helps prevent confusion regarding criminal liability. An individual may be prosecuted for bribery, criminal misconduct, cheating, or another scheduled offence and may also face prosecution under the PMLA where the statutory conditions are met. Such proceedings do not, by themselves, violate the protection

[64] *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929; *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1244; *Manish Sisodia v. Central Bureau of Investigation*, 2023 INSC 956.

against double jeopardy under Article 20(2) of the Constitution, because the essential ingredients of the respective offences may differ. However, the protection against double jeopardy applies where a person is prosecuted and punished more than once for the same offence. Courts must therefore examine the substance of the charges rather than relying only on the fact that two agencies are involved.

The paper also draws attention to procedural challenges arising from concurrent investigations. Different agencies may collect overlapping evidence, search the same persons, interview the same witnesses, and seek attachment of property associated with the alleged criminal activity. If these actions are carried out without effective coordination, they may lead to unnecessary duplication, delays, and prejudice to the accused or affected third parties. The existence of two proceedings may also complicate bail applications and prolong detention. Such concerns are particularly significant where trials are delayed and the accused remains in custody for an extended period.

Judicial decisions have established important rights and safeguards in this regard. The Supreme Court has recognised that money laundering is a distinct offence and that a legal nexus must exist between the scheduled offence and the proceeds of crime. It has also emphasised procedural safeguards relating to arrest, the right to a fair trial, and protection against arbitrary or prolonged detention. These principles demonstrate that the seriousness of an economic offence does not place investigative agencies beyond constitutional or statutory limits. Criminal enforcement and individual liberty must go hand in hand. Practical and institutional reforms are necessary to improve the framework for dual prosecution. First, the CBI and ED should clearly identify the offence under investigation, the alleged proceeds of crime, and the grounds for initiating PMLA proceedings. Second, the agencies should coordinate evidence gathering and case management while maintaining their independent statutory responsibilities. Third, courts should actively manage related proceedings, minimise duplication, and reduce the risk of inconsistent outcomes. Fourth, safeguards concerning arrest, bail, property attachment, and third-party interests must be strictly applied. Finally, transparent investigative processes would help build public confidence in both agencies.

The proposed reforms are not aimed at weakening the enforcement of economic offences. Instead, they seek to ensure that enforcement remains lawful, proportionate, and effective. Where distinct offences are supported by evidence and the statutory requirements are met,

parallel prosecution is justified. It becomes problematic when one proceeding is treated as automatic proof of the other, when procedural safeguards are disregarded, or when the accused is subjected to unnecessary duplication and prolonged detention.

To conclude, dual prosecution within the Indian legal system is a legitimate tool for tackling complex economic offences, provided it is conducted lawfully. The CBI and ED must operate within their respective jurisdictions, establish the ingredients of the offences they investigate, and respect constitutional protections. Courts should ensure that parallel proceedings remain distinct in law but are coordinated in practice. This balance can strengthen accountability for corruption and money laundering while upholding the principles of fairness, liberty, and the rule of law that underlie the criminal justice system.