Appeal Against 2G Acquittals

What is the issue?

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- Recently, Enforcement Directorate (ED) has moved the Delhi High Court in appeal against the acquittals in the trial court verdict on 2G.
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- Click here to know more on the verdict
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- There were multiple flaws in the spectral allocations and the prosecution in the trial court that needs further scrutiny.
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What are the anomalies?

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- Cases against impropriety in the coal-block allocations and the 2G spectrum allocations were essentially similar in nature.
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- While both involved accusations of wrongful allocation of public resources for private profit, one resulted in conviction and the other in acquittal.
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- The difference in verdicts points strongly to the possibility that the trial court misapplied law and misunderstood in terms of the case.
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- **2G case -** First-Come-First-Serve (FCFS) policy was criticised, as it had been unjustly tampered to benefit certain players at the cost of the exchequer.
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- While the Supreme Court (SC) held that the tweaks were arbitrary, it had been muted on the substantive merit of the FCFS policy itself.
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- Subsequently, conviction of the accused couldn’t be secured as malafide intentions were not established beyond doubt.
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- **Coal Scam -** Contarily, the court held that in the allocation of coal-blocks, reasonable precautions to preclude losses were not exercised.

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- Coal secretarty H.C.Gupta was convicted under the Prevention of Corruption Act (PoCA)1988 for his non-diligence which led to a loss of public money.
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- Logically, if lack of due diligence to prevent exchequer losses is a valid ground for conviction, then the 2G case should have also resulted in conviction.
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Was PoCA effectively employed?

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- PoCA of 1988 explicity states that contravention of “public interest” is also a corrupt practice, along with “abusive use of office for pecuniary gains”.
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- Hence, the burden of proof to show that all the safeguards and precautions were exercised to ensure no public loss lies clearly on the accused.
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- But the prosecution failed to press on this and rather the debates were centered on the charges of whether money was laundered to tweak FCFS.
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- This formed the crux of why the case was dismissed for lack of evidence, and speaks volumes on the incompetence of the prosecution.
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What is the legality of the FCFS policy?

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- FCFS has been a long standing state policy in allocating natural resources.
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- Despite its misuse in the spectrum issue, the SC has not denounced it.
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- SC has stated that it respects the prerogative of the state to determine policy and that any policy must be tenably based on desired outcomes.
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- FCFS’s allocative channel grants ‘first movers advantage’ and is best suited to incentivise firms to explore and discover resocures by taking financial risks.
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- Notably, it is useful in sectors like oil & gas exploration, where the seeker

would have to spend considerable resources in the discovery of the resource.
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- Hence, the economics of demand and supply along with other significant aspects if any are to be employed to select the resource allocation mode.
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- **2G case -** The very fact that the competing players far outnumbered the slots available implies that the resources commanded good value in the market.
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- In such circumstances, auctioning would have led to a fuller realisation of value for both the state and the players, but it was not employed.
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What is the issue with licence transfers?

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- The purpose of allotting spectrum is to enable players to utilise the resource for enhancing tele-connectivity and tele-density in the country.
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- Hence, a substantive entry and exit criteria should have been established and subsequent transfer of spectrum should have been regulated.
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- But this was not the case and there were clear cases of spectrum transfers that had benefited the initial non serious buyers enormously.
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- Notably, across sectors, unregulated subsequent licensing transfers of natural resources has effectively made it a free trading commodity, which is not desired.
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Source: Indian Express

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