

Exploring Double Jeopardy: Legal and Ethical Aspects of Retrying Acquitted Defendants

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ABSTRACT

This paper discusses about the concept of Double Jeopardy. The paper is divided into three main parts. The first part of the paper discusses about the clauses mentioned in section 300 of the code of criminal procedure. The second part of the paper describes the difference between section 403 of the code of criminal procedure and article 20(2) of the Indian Constitution. Thirdly, it talks about the exception which may be applicable in various instances followed by the conclusion.

INTRODUCTION

In 1793, the legal system doctrine of res judicata was incorporated into Indian legislation. The common laws principle whereby a tribunal cannot accept any case regarding civil or criminal issues that have already been tried and decided by a court was adopted by 120 justices in British India. (Tariq, 2020)¹ Double jeopardy is an idea that came from the rule of Natural Justice to safeguard the credibility of the "Criminal Judiciary System. It is based on the "audi alterm partum rule," which states that an individual cannot be penalized for the exact same offence more than once. Double Jeopardy was not an invention in the Indian Constitution. It existed prior to the enforcement of the Indian Constitution of India. The clause in the Cr PC that forbids penalties for the same crime repeatedly is mentioned in Section 300. This law was formulated to prevent harassment of the accused by conducting repeated trials for the same offence more than once.

CLAUSES UNDER DOUBLE JEOPARDY

According to S. 300(1) of the Criminal Procedure Code, an individual cannot be prosecuted for the same crime repeatedly if they have already been tried by a tribunal of competent authority and declared not guilty or condemned for a crime they perpetrated. (Das, 2008)² The defendant cannot be prosecuted twice for the same sequence of circumstances and same offence, nor may he or she be charged repeatedly for the same circumstances and other charges brought against him or her as per subsection (1) of section 221 or subsection (2) of section 221.

¹Akhil Reed Amar, J. L. M., 1995. Double Jeopardy Law after Rodney King. Colum. L...

²Das, T., 2008. A Discussion on Law of Double Jeopardy in India. SSRN.

Furthermore, for the purposes of this clause, an "acquittal" does not encompass the termination of a petition or the release of an alleged perpetrator. The issue must be heard by the appropriate tribunal during its initial hearing. The provision further stipulates that for a case to qualify under this idea, all relevant facts must be the same. This implies that if the evidence presented in the second hearing are the same as the findings in the first hearing, the individual will be prohibited within this section to prosecute the accused again.

An individual cannot be punished for additional accusations in a subsequent trial, according to section 300 (2), of CrPC if they have perpetrated multiple crimes but were not all convicted in the initial trial. This implies that an individual cannot be accused for another crime under a second trial since it would be an exploitation of the legal system if they were previously cleared or found guilty for one crime and then subsequently charged with another. The defendant cannot always be put on trial for various offences individually. In order to prevent this misuse, section 300(2) mandates that state administration approval be obtained prior any individual is charged with a fresh crime for any violation for which a different allegation may have been brought against them at a prior trial. (Gowda, 2019)³

Furthermore, the clause stipulates that the above section does not prohibit the indictment under a second hearing for a separate charge, but it must only be started with the state government's permission.

Only in situations where certain new revelations emerged as a result of an earlier wrongdoings are second trials for convicts allowed under section 300 (3). At first, this provision only applies to those who have been found guilty of the crime; it does not apply to those who have been cleared of it. The second part of this article states that a defendant may only be brought to trial if certain information pertaining to the crime were not brought to the tribunals' attention.

It implies that a conviction can be overturned if fresh information about the matter comes to light that the judges were not aware of during the original hearing. It stipulates that any new information or repercussions should have emerged following the initial trial's verdict or dismissal and not have been presented to the court's attention. As a consequence, it states that the prisoner may only be convicted again for the freshly recorded crime that was not recognized in the first prosecution if any new offence occurred during the first prosecution as an outcome of a previously known crime that was not disclosed to the jury. (sahu, 2021)⁴

³Gowda, S. N., 2019. Double Jeopardy. *Supremo Amicus*, Volume 14.

⁴sahu, a., 2021. critical analysis on the fair trial of india. *Jus Corpus Law Journal*.

This section's clauses (3) and (4) together continue the prohibition against double jeopardy. The primary acquittal or guilty verdict will not prevent the Hon'ble court from having awareness of the profound offence, according to this clause, if any jury is incapable to prosecute the suspect of any allegation that is truly the outcome of the crime for which the jury is taking trial. This simply indicates that the subsequent violation, which was the result of the original wrongdoing, can be prosecuted in another judicial authority if the court in which the original trial was held was insufficiently qualified to do so, while the initial hearing will not preclude the second trial.

In accordance with Section 258 of the Criminal Procedure Code, which deals with the judiciary's authority to halt a case's progress at any point without rendering a judgement, a defendant is dismissed as per Clause (5) of this section. The cessation can be issued upon the recording of the key witness' testimony, the announcement of an exoneration, or the liberation of the offender, all of which have the same effect as a dismissal. As a result, clause (5) specifies that until the court from where the release was made agrees, no such alleged perpetrator under Section 258 may be prosecuted again for the exact same offence. This clause is designed to safeguard the individual against the misuse of the authority of new indictment in such circumstances.

The final sentence of S. 300 states that S. 26 of the General Clause Act of 1897 will not be affected by anything in S. 300 of the CrPC.(Roy, 2015)⁵

S. 26 defines an action or neglect as a crime if it violates more than two laws. This indicates that if the suspect commits an act that is covered by two or more laws, he or she will likely face charges under one or both of those laws. The components of the two crimes for which the offender is charged are highlighted. Also, it is stated that the convicted should not be held accountable and penalized repeatedly for the same violation, although the prohibition enforced by S. 26 cannot be applied if there are two separate offences.

DIFFERENCE BETWEEN 403 & 20(2)

No one shall be placed in danger repeatedly for the same conduct, and autrefois acquit, are embodied in Section 300 of the Criminal Procedure Code . These rules vary markedly from the double jeopardy rule found in Article 20(2) of the Indian Constitution.(Ashok, 2021)⁶ As the expressions "prosecuted" and "punished" are defined in Article 20(2) of the Indian Constitution, indictment of the charged is required to invoke the doctrine of double jeopardy. An individual cannot be sentenced for the exact same crime

⁵Roy, C., 2015. Protection against Double Jeopardy in India-A Critical Analysis.. Indian JL & Just., Volume 6.

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⁶Ashok, S. V., 2021. Doctrine of Double Jeopardy. International Journal of Law Management & humanities, 4(5).

again under Section 300 of the Criminal Procedure Code. Hence, whether a person is convicted of a crime or found not guilty of it, the concept expressed in Section 300 of the Criminal Procedure Code can be used in either situation. It is founded on the presumption that no one should face punishment again for the same crime. Section 403 of the Criminal Procedure Code (CrPC) and Article 20(2) of the Indian Constitution are two distinct legal provisions that serve to protect the rights of individuals in criminal proceedings. While both provisions aim to provide safeguards against potential abuses of the criminal justice system, they operate in different ways and at different stages of the legal process.

Section 403 of the CrPC is grounded in the principle of double jeopardy, which provides that no person shall be prosecuted or punished twice for the same offence. This rule is intended to protect individuals from being subjected to multiple criminal proceedings based on the same set of facts and evidence, thereby safeguarding their right to a fair trial and protecting them from potential abuses of the legal process. (Subramaniam, 2009)⁷ Article 20(2) of the Indian Constitution, on the other hand, provides protection against self-incrimination, which means that no person accused of an offence can be compelled to be a witness against themselves. This principle is based on the idea that no person should be forced to incriminate themselves, as this would violate their fundamental right against self-discrimination and potentially undermine the fairness of the legal process. In conclusion, while Section 403 of the CrPC and Article 20(2) of the Indian Constitution share a common goal of protecting the rights of individuals in criminal proceedings, they operate in different ways and provide distinct legal protections. Understanding the differences between these provisions is essential for ensuring that individuals are treated fairly and that the criminal justice system functions effectively.

ANOMALY TO THE DOCTRINE OF JEOPARDY IN SECTION 403

A major legal doctrine known as the "law of double jeopardy" forbids people from going through more than one trial or penalty for the same crime. Nonetheless, there are few exceptions to this law that, in certain situations, permit a defendant to face retrial for the same crime.

1. When an individual is deemed guilty or exonerated of a crime in a trial conducted by a court without jurisdiction, Section 403 of the Code of criminal procedure of India first comes into play. This exception recognizes that an individual must be prosecuted by a court only when it has jurisdiction over the case and permits an individual to be tried again in a court that does. (Akhil Reed Amar, 1995)⁸

⁷Subramaniam, S. R., 2009. The Contours of the Double Jeopardy in India: Revisted. Amicus Books An Introduction

⁸Akhil Reed Amar, J. L. M., 1995. Double Jeopardy Law after Rodney King. Colum. L...

2. Secondly, when a small offence that was the subject of a conviction or acquittal turns out to be a big violation. If the conduct for which a defendant was originally found guilty or exonerated constituted a more heinous felony, this exemption permits a defendant to be brought to trial.
3. The third exemption pertains to cases when an individual was deemed guilty or innocent of a crime by a foreign court. This exception acknowledges the possibility that an individual may have perpetrated a crime in another nation which is additionally a crime under Indian law and permits the offender to face a new trial in India for the same crime.
4. The next exception is where a person was found guilty or cleared of an offence, but the finding was made through deceit, collusion, or some other illegitimate methods. This exception recognises that a defendant shouldn't be prevented from being prosecuted again for the same crime if their judgment or acquittal was achieved unlawfully.
5. The last exception occurs when an individual is deemed guilty or innocent of a crime that involved many acts. If the act was not the primary topic of the first trial, this exception permits a suspect to be prosecuted again for a different crime resulting from the same act. (Sarup, 1964)⁹

These exceptions to Section 403 of the CrPC of India help to comprehend the nuances of criminal law and the protections afforded to individuals in the legal system. These exceptions are designed to ensure that justice is served and that individuals are held accountable for their actions while also upholding the principles of fairness and due process.

CONCLUSION

In summation, the doctrine of double jeopardy, which forbids someone from being tried or penalized repeatedly for the same crime, is crucial to the criminal justice system. In India, the Code of Criminal Procedure (CrPC), which is codified in Article 20(2) of the Constitution, likewise upholds this notion. Double Jeopardy has generated a lot of debate and argument both in India and around the world. While this is a core justice concept, there have been times when it has been abused, which has resulted in the accused not being held accountable. The CrPC does, nevertheless, offer a few exceptions to the rule of double jeopardy, allowing for a rehearing or inquiry in specific situations, such as when fresh evidence is discovered, or the first hearing was not lawfully executed. So, in the interest of ensuring that justice is administered in a just and unbiased method, it is essential to comprehend the specifics of the concept of double jeopardy in the scope of the CrPC and to be informed of the exemptions to this

⁹Sarup, R. K. P., 1964. 'Double Jeopardy' in Indian law concerning offences committed abroad: Need for a fresh approach. Journal of the Indian Law Institute, Volume 6.

principle. Ultimately, the rule against double jeopardy is essential for preventing capricious or unjust mistreatment of people in the criminal judicial system, so it follows that it must always be recognized and safeguarded.

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