

# The Doctrine of Double Jeopardy

## “A Broader Aspect”

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### Abstract:

The evolution of double jeopardy in India from a procedural criminal law to a constitutional privilege is traced in this paper. The paper would analyse judicial rulings on the scope and boundaries of the doctrine of double jeopardy in-depth and attempt to sensitize and educate readers who are unfamiliar with Indian laws about the regional variations in this nearly universal principle that a person should not be punished twice for the same crime.

**Keywords:** Double Jeopardy, India, criminal procedure code.

**INTRODUCTION:** The notion of "autrefois convict" or "double jeopardy" is incorporated into Article 20(2) of the Indian Constitution, which states that a person cannot be punished for the same offence twice. "Nemo debet bis vexari, si constat curice quod sit pro una iti eadem causa" is an English common law maxim that expresses the doctrine against double jeopardy which means that no man shall be punished twice, if it appears to the court that it is for one and the same cause). Additionally, it adheres to the "audi alterum partem rule," which states that no one may receive more than one punishment for the same offence. Moreover, the practise of punishing someone twice for the same offence is known as double jeopardy. Double jeopardy basically means that if a person has been prosecuted or convicted once cannot be punished twice for the same criminal offence. if a person is charged with the same offence in court once again, he or she may assert the legal defense of double jeopardy.

**ORIGIN:** This idea, which is referenced in one court and seems to be a part of the English common law in addition to every other school of jurisprudence, has no particular genesis, leading to the conclusion that it has always been. The Greeks and Romans were aware of the notion of double jeopardy, and Justinian's Digest eventually recognised it as the rule that the governor should not permit the same individual to be charged with a crime for which he had previously been tried and found guilty. The defendant was subject to arrest by the prosecution within 30 days of the defendant's acquittal under a different criminal procedure than what we have now.

The Magna Charta's double jeopardy clause has not been discussed and cannot be inferred by implication. The concept of double jeopardy was derived by continental and English legal systems from a common source: canon law. Canon law established that no one, not even God, might face judgment for the same offence more than once as early as 847 A.D. The Justinian Code has adopted this concept into Roman law. Additionally, double jeopardy was acknowledged as a right protected by the constitution in a number of countries, including the United States, Canada, Mexico, and India. In India, double jeopardy existed in the form of Section 26 of the General Clauses Act of 1897 and Section 403 (1) of the previous

Code of Criminal Procedure, which has now been repealed by Section 300 Amendment. Prior to the creation of the Indian Constitution, this idea already existed. Article 50 of the European Union Charter of Fundamental Rights, Article 4(1) of the European Convention on Human Rights, and Article 14(7) of the International Covenant on Civil and Political Rights are all acknowledged as international treaties.

**INDIAN LAW AND DOUBLE JEOPARDY:** Prior to the implementation of the Indian Constitution, the concept of double jeopardy existed in India. The law was passed under section 26 (3). According to Section 26, "provision as to offences punishable under two or more enactments, where an act or omission constitutes an offence under two or more enactments, the offender shall be liable to be prosecuted or punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence." And Section 300 of the amended Criminal Procedure Code, 1973 (Section 403(1) of (the old) CrPC,1898) states that a person who has previously been tried by a court of competent jurisdiction for an offence and found guilty or not guilty of the offence shall not be subject to a second trial for the same offence or on the same facts for any other offence for which a different charge from the one against him might be brought.

It should be emphasised that both the *autrefois acquit* and *autrefois convict* pleas are recognised by the Code of Criminal Procedure. The following requirements must be met in order to raise either of the Code's pleas: first, there must have been a prior conviction or acquittal; second, the conviction or acquittal must have been rendered by a court with competent jurisdiction; and third, the subsequent proceeding must have been brought for the same offence. The phrase "same offence" indicates that the offence for which the accused will be prosecuted and the offence for which he will be tried again must be the same and be founded on the same facts.

According to Section 71 of the IPC, the offender may not be penalised for more than one of these offences unless it is specifically stated that the offender may be punished for several offences made up of the same offence.

### **CONSTITUTIONAL IMPLICATIONS –**

Article 20(1) states about *ex- post facto* law. *Ex post facto* laws impose fines or convictions for crimes that have already been committed and amplify the penalties for such offences. This is based on the United States of America Constitution. It also produces a backwards-looking affect. It refers to situations where a law imposes a penalty or punishment for an act that was not punishable at the time the offence was committed, or imposes a greater penalty than what was authorised at the time the offence was committed, or when there is a change in the rule governing the admissibility of evidence or the process that results in a conviction.

Double Jeopardy is one of the essential rights guaranteed by the Indian Constitution and is included in Article 20(2) of the Constitution of India. Also, elements of fundamental rights were taken from the U.S. Constitution, including the idea of double jeopardy. The Fifth Amendment of the United States Constitution states that "no person shall be twice placed in jeopardy of life or limb," which incorporates the principle of double jeopardy.

In India, the Constitution's article 20(2) prohibits double jeopardy and guarantees protection for those who have been convicted of crimes. It states that "no person shall be tried or punished for the same offence more than once." The protection provided by clause (2) of Article 20 of the Indian Constitution

is more limited than the prohibitions against double jeopardy in the United States and the United Kingdom.

Article 20(3) states about self discrimination. Self-discrimination is illegal since, in accordance with the law, "no individual accused of any offence shall be required to be a witness against oneself." It is based on the adage "Nemo tenetur prodere accusare seipsum," which states that no one is required to place the blame for their own mistakes on themselves. It has to do with the admissibility of forced confessions, which are prohibited from being presented as evidence. No one will also be forced to make comments about themselves that could be construed as self-harming or confessional utterances.

Regardless of whether an accused person was found not guilty or guilty in the first trial, the American and British Constitutions provide protection against double jeopardy for the second prosecution for the same crime. However, under Article 20(2), the accused is only protected from double punishment when a second prosecution for the same offence is sought after the accused has already been "prosecuted" and "punished."

So, the protection provided by clause (1) of Article 20 is restricted by the use of the word "prosecution." If the prosecution results in no punishment for the offence, clause (2) of article 20 does not apply, and an appeal against acquittal, if permitted under the procedure, is essentially a continuation of the prosecution.

## **DOUBLE JEOPARDY IN CODE OF CRIMINAL PROCEDURE**

Contrary to what is stated in the constitution, the position of double jeopardy legislation is far more expansive under the Criminal Procedure Code. The notion is described in S. 300 of the Criminal Procedure Code, which also provides provisions on what constitutes double jeopardy and all of the exclusions provided thereunder. Double jeopardy laws under the CrPC deal with both the concerns of autfois convict and autfois acquit, which is one of the main points of emphasis. All people who can be found guilty of the crime or found not guilty face the possibility of a second trial.

In S. 300 of the CrPC, the doctrine of double jeopardy is found. This section's six subclauses try to give an in-depth understanding of the concept.

S.300(1): According to S. 300(1) of the Criminal Procedure Code, a person cannot be tried for the same offence twice if they have already been tried by a court of competent jurisdiction and found not guilty or convicted for an offence they committed. The defendant cannot be tried again for the same set of circumstances and same offence, nor may he or she be tried again for the same circumstances and different charges brought against him or her under subsection (1) of section 221 or subsection (2) of section 221.

Furthermore, for the purposes of this clause, a "acquittal" does not include the dismissal of a complaint or the release of an accused person. The case should be heard by the appropriate court during its first trial. The provision further stipulates that for a case to qualify under this idea, all relevant facts must be the same. If the facts of the case in the second trial are the same as the facts in the first trial, the individual will be prohibited under this provision from the second trial.

S.300(2): According to this clause, a person cannot be charged with further offences in a subsequent trial if they have committed several offences but were not all tried in the first trial. This means that a person cannot be charged with another crime under a second trial since it would be an abuse of the legal system if they were previously cleared or found guilty for one crime and then separately charged with another.

A person cannot always be put on trial for various offences individually. In order to prevent this abuse, section 300(2) makes it necessary to get the state government's permission before bringing new charges against anyone for any offence for which they may have already been found guilty at a previous trial. Furthermore, the clause stipulates that this section does not prohibit the prosecution under a second trial for a distinct offence, but that it should only be started with the state government's permission.

S.300(3): According to clause (3) of the section, a criminal may only be tried a second time if new facts becomes available as a result of an earlier offence. First off, this part only applies to those who have been found guilty of the crime; those who have been cleared of the charge are not covered. The second part of this section states that a person can only be tried again in situations where the courts were not made aware of certain information related to the offence.

This means that a conviction can be overturned if new facts about the case comes to light that the judges were not aware of during the first trial. It stipulates that any new facts or consequences must have emerged since the first trial's conviction or acquittal and not have been brought to the court's attention. As a result, it states that the convict may only be tried again for the newly observed offence that was not known in the first trial if some new offence occurred during the first trial as a result of an already known offence but was not disclosed to the courts in the first trial.

S.300(4): This section's clauses (3) and (4) together continue the prohibition against double jeopardy. The first acquittal or conviction will not prevent the competent court from taking cognizance of the consequential offence, according to this paragraph, if any court is incompetent to try the accused of any offence that is genuinely the result of the offence for which the court is holding trial. This simply indicates that the second offence, which was the result of the first offence, can be tried in another competent court if the court where the first trial was held was insufficiently qualified to do so, and the first trial will not bar the second trial.

S.300(5): In accordance with Section 258 of the Criminal Procedure Code, which discusses the court's authority to halt the case's progress at any point without rendering a judgement, a person is discharged under Clause (5) of the section. However, the stoppage may be made after the principal witness' testimony has been recorded, an acquittal has been declared, or the accused has been released, all of which have the same effect as a discharge. Therefore, according to this clause (5), no such accused person under S 258 shall be tried again for the same offence without the permission of the court from which such discharge was made. This clause was created to safeguard the person against the abuse of new prosecution authority in such circumstances.

S.300(6): The last clause of S. 300 states that S. 26 of the General Clause Act of 1897 shall not be affected by anything in S. 300 of the CrPC. S. 26 defines an act or omission as an offence if it violates two or more laws. This means that if the accused commits an offence 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 offences with which the accused is charged are highlighted.

### **CONDITIONS FOR THE NON-APPLICABILITY OF DOCTRINE OF DOUBLE JEOPARDY**

The protection of the double jeopardy clause may not always be applicable. Mostly as a result of legal interpretations throughout history, the courts have developed some principles for determining the application of double jeopardy as a legitimate defence.

- ✓ **Civil Suit-** The defence of double jeopardy is only admissible in criminal court; it is inadmissible in civil court. For the same crime committed in criminal court, the defendant cannot defend himself against punishment in civil court. For instance, the family of "B" can file a lawsuit in both civil and criminal courts if "A" killed "B" in a drunk driving incident. To recover the 'B's financial damages, they may file a lawsuit in civil court. Double jeopardy cannot be used by "A" to shield himself from penalty for his offence in a civil case. He could, however, defend himself in a criminal court by citing double jeopardy.
- ✓ **Jeopardy must begin-** The double jeopardy doctrine cannot be used until the defendant has been placed in danger by the executive authorities. As a result, the double jeopardy theory cannot be used as a defense before the defendants have been tried. Jeopardy starts or attaches to the case after the trial jury is called in.
- ✓ **Jeopardy must end-** Jeopardy must start and end the same way each time. To put it another way, the case must be resolved before the double jeopardy doctrine can be applied to stop the defendant from being detained and punished for the same crime. When a judge enters an acquittal judgment before sending the matter to the jury or when the punishment has been served. Jeopardy usually ends when the court renders a decision.

#### LANDMARK CASES-

##### **MAQBOOL HUSSAIN v. STATE OF BOMBAY, 1953**

Facts: The petitioner was an Indian citizen who travelled from Jeddah to Bombay's Santa cruz airport. He didn't inform that he had taken 1250.361gms of gold with him when he landed, but when he was searched, he was discovered in violation of Indian Government's notification. According to Sea Customs Act VIII of 1878, Article 167, Clause 8, the gold was seized by the customs authorities. The owner of the gold, however, was given the chance to pay a 12,000 rupee fine, which needed to be paid within four months of the order's date. A copy of the order was given to the appellant, but no one stepped forward to claim the gold. The same issue was raised in relation to "autrefois convict" or "double jeopardy," so the Supreme Court of India ordered that the Bank of the Constitution and Criminal Appeal consider the plea.

Issue raised- Whether the Sea Customs Act, 1878 and the order of court or the judicial tribunal can be used to support a plea of double jeopardy?

Held- The prosecution under the Foreign Regulation act, 1947 was upheld because the previous detention under the sea custom act, 1878 did not constitute a judgment or order of the court or judicial tribunal to support the argument of the double jeopardy.

##### **KALAWATI v, STATE OF HIMACHAL PRADESH, 1953**

Facts- To shield her from the cruelty, the accused (plaintiff) killed her spouse (defendant). The truth is that after being mistreated by her husband, she was striving to defend herself from cruelty. In this case, the accuser murdered her husband in retaliation for harassing her. Due to a lack of evidence, she was declared innocent. Yet, the state ultimately appealed against her to the Higher Court.

Issue raised- Whether right to appeal under article 20(2) of the constitution violates this case?

Held- The Supreme Court determined that because there was no sentence in the earlier trial, the appeal is a continuation of the prior trial rather than a new trial for the same offence, and thus it is not covered by

Article 20(2). As a result, an appeal against a conviction for murder would not contravene Article 20(2) of the Constitution.

### **THOMAS DANA v. STATE OF PUNJAB, 1959**

Fact- The Collector of Central Excise and Land Customs issued orders confiscating the seized goods and enforcing heavy personal penalties on both of the petitioners after the two were detained by the police while attempting to smuggle a significant amount of Indian and foreign currency as well as other illegally imported goods out of India. The petitioners were found guilty and sentenced by the Additional District Magistrate. This resulted in an appeal to the supreme court.

Held-The supreme court decided that in order to request protection under article 20(2), the following requirements must be met.

- ✓ That there was a previous prosecution.
- ✓ As a result of this the accused was punished.
- ✓ That the punishment was for the same offence.

### **BAIJ NATH v. STATE OF BHOPAL**

In this case, the defendant was a government employee who had been charged with a crime under the Indian Criminal Code and sentenced. The prosecution was overturned in a High Court appeal due to a lack of sanctions. The accused was then once more prosecuted with a legal penalty. The court ruled that the second prosecution could not be contested on the grounds of double jeopardy because the first prosecution was declared to be invalid.

### **INTERNATIONAL PERSPECTIVE**

Although some common-law countries have made it a requirement to have it in their Constitutions, others have added double jeopardy provisions in their statutes, all common-law countries have them. Since its roots is so widespread, it has been found that different people have interpreted and used it in different ways.

**ENGLAND:** The Macpherson Report made recommendations after the murder of Stephen Lawrence, including the repeal of the double jeopardy law and the right to retry acquitted murder suspects in cases where "fresh and valid" new evidence is later discovered. The Law Commission eventually agreed with this judgement in its 2001 report, "Double Jeopardy and Prosecution Appeals." The suspected suspect may be tried again under the new circumstances if "new, compelling, reliable, and significant evidence" is discovered that was not previously known and becomes known afterwards.

**UNITED STATES:** The Fifth Amendment of the United States Constitution establishes the principle of double jeopardy and covers continuous prosecution following an acquittal, conviction, certain procedural errors, and repeated punishments stemming from the same allegation. The prohibition against double jeopardy for the same offence forbids the government from seeking to "punish" someone criminally twice.

**GERMANY:** The German Constitution's Article 103(3), which prohibits punishment for the same offence committed more than once under general law, refers to the idea of double jeopardy.

**JAPAN:** The concept of double jeopardy is covered in Article 39 of the Japanese Constitution. It said that no one can be subjected to double jeopardy and that no one can be held criminally responsible for an act that was legal when it was committed or for which he was found not guilty.

**CONCLUSION:** Every accused person has the right to at least one appeal following a conviction. It is referred to as an acquittal and no further prosecution is permitted if the conviction is deemed unlawful in an appeal owing to a lack of evidence. Article 20(2) of the Indian Constitution addresses the concept of double jeopardy and does not restrict the convening of a departmental inquiry before or after the beginning of a criminal prosecution. Because of this, this idea is crucial to our legal system even after a person has been found guilty and sentenced to an appropriate punishment. Around the world, the doctrine has been implemented into legal systems.

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