DOCTRINE OF DOUBLE JEOPARDY

By

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Introduction

Double Jeopardy has been in existence for 800 years. The principle states that a person who has been acquitted (found not guilty) of a criminal offence cannot be retried for that same offence, even if new evidence is found later that proves the person's guilt. The Principles of "Autrefois convict" or Double Jeopardy which means that person must not be punished twice for the offence Doctrine against Double Jeopardy embodies in English common law's maxim '*nemo debetbisvexari, siconstatcurice quod sit pro unaitieadem causa*' (no man shall be punished twice, if it appears to the Court that it is for one and the same cause). It is also follows the "*audi alterum partern rule*" which means that no person can be punished for the same offence more than ones. And if a person is punished twice for the same offence it is termed Double Jeopardy.

The principle was inexistence in India even prior to the commencement of the Constitution-Section 26 of the General Clause Act 1897 says: *Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.*

Double Jeopardy in Different countries

International Covenant on Civil and Political Rights

The 72 signatories and 166 parties to the International Covenant on Civil and Political Rights recognise, under Article 14(7): No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Australia

In contrast to other common law nations, Australian double jeopardy law has been held to further prevent the prosecution for *perjury* following a previous acquittal where a finding of perjury would controvert the acquittal.

Canada

The Canadian Charter of Rights and Freedoms includes provisions such as Section 11(h) prohibiting double jeopardy. However, this prohibition applies only after an accused person has been "finally" convicted or acquitted. Canadian law allows the prosecution to appeal an acquittal: if the acquittal is thrown out, the new trial is not considered to be double jeopardy, as the verdict of the first trial would have been annulled. In rare circumstances, a Court of appeal might also substitute a conviction for an acquittal. This is not considered to be double jeopardy, either – in this case, the appeal and subsequent conviction are deemed to be a continuation of the original trial.

Germany

The Basic Law (*Grundgesetz*) for the Federal Republic of Germany does provide protection against double jeopardy if a final verdict is pronounced. A verdict is final if nobody appeals against it. Nobody shall be

punished multiple times for the same crime on the basis of general criminal law *Article 103(3)*.

Japan

The Constitution of Japan states in Article 39 that no person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Pakistan

Article 13 of the Constitution of Pakistan protects a person from being punished or prosecuted more than once for the same offence.

South Africa

In South African labour law, double jeopardy can be defined as the following: "Where employees have been acquitted at a disciplinary enquiry, or the presiding officer has imposed a penalty/sanction less severe than dismissal, they cannot generally be subjected to a second enquiry on the same offence. Nor may the management ignore the decision of the chairman of a properly constituted disciplinary hearing and substitute its own decision. A dismissal in such circumstances would invariably be unfair."

South Korea

Article 13 of the South Korean Constitution provides that no citizen shall be placed in double jeopardy.

United Kingdom

A legal principle the Double Jeopardy which prevents people being tried for the same crime twice has been scrapped in England and Wales.

Scotland

The double jeopardy rule no longer applies absolutely in *Scotland* since the Double Jeopardy (Scotland) Act 2011 came into force on 28th November, 2011.

United States

The U.S. Supreme Court in *Gamble v. United States*, 2018 agreed to reconsider its long-standing view that putting someone on trial more than once for the same crime does not violate the Constitution's protection against double jeopardy.

Among the provisions of the Fifth Amendment is that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb." That's popularly understood to mean that nobody can be put on trial twice for the same crime. But in a line of cases stretching back more than 150 years, the Supreme Court has ruled that being prosecuted twice — once by a State and again in federal Court — doesn't violate the clause because the States and the federal Government are "separate sovereigns."

The Court has held that when a defendant in a single act breaks both a federal and a State law that amounts to two distinct offenses and can result in two separate prosecutions. Barring States from prosecuting someone already tried in federal Court "would be a shocking and untoward deprivation of the historic right and obligation of the States to maintain peace and order within their confines," the Court has said.

India

In India, a partial protection against double jeopardy (Autrefois convict) is a Fundamental Right guaranteed under Article 20(2) of the Constitution of India. It states that "No person shall be prosecuted and punished for the same offence more than once". However it does not extend to autrefois acquit, and so if a person is 'acquitted' of a crime can be retired. The protection against autrefois acquit is a statutory right in our country and not a fundamental right.

Ex-Post facto Law

Article 20(1) says that no person shall be convicted of any offence except for violation

of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. This is called *Ex-Post facto* Law. It means that Legislature can not make a law which provides for punishment of acts which were committed prior to the date when it came into force. This means that a new law cannot punish an old act.

Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. This is called Doctrine of Double Jeopardy. The objective of this article is to avoid harassment, which must be caused for successive criminal proceedings, where the person has committed only one crime. There is a law maxim related to this – *nemo debetbisvexari*. This means that no man shall be put twice in peril for the same offence.

There are two aspects of Doctrine of Jeopardy *viz*., autrefois convict and autrefois acquit. Autrefois convict means that the person has been previously convicted in respect of the same offence. The autrefois acquit means that the person has been acquitted on a same charge on which he is being prosecuted.

Article 20(3) of the Constitution says that no person accused of any offence shall be compelled to be a witness against himself. This is based upon a legal maxim which means that No man is bound to accuse himself. The accused is presumed to be innocent till his guilt is proved. It is the duty of the prosecution to establish his guilt.

There are Several Reasons for Double Jeopardy Protection

1. To prevent the Government from using its superior resources to wear down and erroneously convict innocent persons.
2. To protect individuals from the financial, emotional, and social consequences of successive prosecutions.
3. To preserve the finality and integrity of criminal proceedings, which would be compromised if the Government were allowed to ignore verdicts if did not like.
4. To restrict prosecutorial discretion over the charging process and
5. To eliminate judicial discretion to impose cumulative punishments otherwise not clearly prohibited by law.

Jeopardy can terminate in four instances:

1. After a jury's verdict of acquittal.
2. After a Trial Court's dismissal.
3. After a Trial Court grants a mistrial and
4. On appeal after conviction.

Judicial Interpretations.

In *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325, held that "The issue estoppels rule is but a facet of doctrine of autrefois acquit. Where an issue of fact has been tried by a competent Court on an earlier occasion and a finding has been recorded in favour of the accused, such a finding would constitute an estoppels or *res judicata* against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence. This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial. Thus, the rule relates only to the admissibility of evidence which

is designed to upset a finding of fact recorded by a competent Court in a previous trial on a factual issue. What is necessary is to analyze the ingredients of the two offences and not the allegations made in the two complaints.

The Supreme Court in *S.A. Venkataraman v. Union of India and another*, AIR 1954 SC 375, Constitution Bench: Held that "In an enquiry under the Public Servants (Inquiries) Act of 1850, there is neither any question of investigating an offence in the sense of an act or omission punishable by any law for the time being in force, nor is there any question of imposing punishment prescribed by the law which makes that act or omission an offence. The learned Attorney-General raised a point before us that the test of the guarantee under Article 20(2) is whether the person has been tried and punished, not for the same act, but for the same offence and his contention is that the offences here are different, though they may arise out of the same acts. In the view that we have taken this question does not arise for consideration at all. It is also not necessary to express any opinion on the question raised by the learned Counsel for the petitioner as to whether for the purpose of attracting the operation of Article 20(2) the punishment must be imposed by the same authority before which the prosecution was conducted.

Supreme Court in *Thomas Dana v. The State of Punjab*, AIR 1959 SC 375, Proceedings before the Sea Customs Authorities wider Section 167(8) are not "prosecution" within the meaning of Article 20(2) of the Constitution. "There is no escape from the conclusion that the proceedings before the Sea Customs Authorities under Section 167(8) were not "prosecution" within the meaning of Article 20(2) of the Constitution. In that view of the matter, it is not necessary to pronounce upon the other points which are argued at the Bar, namely, whether there was a "punishment" and whether "the same offence" was involved in the proceedings before the Revenue Authorities and the Criminal Court. Unless all the three essential conditions laid down in Clause (2) of Article 20 are fulfilled, the protection does not become effective. The prohibition against double jeopardy would not become operative if any one of those elements is wanting. Supreme Court in *State of Bombay v. S.L. Apte and another*, AIR 1961 SC 578. The Constitution Bench held that "the offences were distinct there is no question of the rule as to double jeopardy as embodied in Article 20(2) of the Constitution being applicable. The next point to be considered is as regards the scope of Section 26 of the General Clauses Act. Though Section 26 in its opening words refers to "the act or omission constituting an offence under two or more enactments", the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to "shall not be liable to be punished twice for the same offence". If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked. It therefore follows that in the present case as the respondents are not being sought to be punished for "the same offence" twice but for two distinct offences constituted or made up of different ingredients the bar of the provision is inapplicable.

In *Manipur Admn. v. Thokchom Bira Singh*, AIR 1965 SC 87, held that Article 20(2) of the Constitution as well as Section 26 of the General Clauses Act to operate as a bar the second prosecution and the consequential punishment there under must be for "the same offence" *i.e.*, an offence whose ingredients are the same. It has been pointed out in the same decision that the fifth amendment of the American Constitution which provides that no person shall be subject, for the same offence, to be twice put in jeopardy of life or limb, proceeds on the same principle. In *Harjinder Singh v.*

State of Punjab, (1985) 1 SCC 42, held that there must be punishment for the offence as a result of the prosecution and the prosecution must be for the same offence and not for distinct offences.

Supreme Court in (1997) 11 SCC 319, held that Negligent driving resulting in accident and thereby causing to the property of A.P. State Road Transport Corporation, damage estimated at Rs.500/- – Departmental enquiry also instituted for rash and negligent driving and culminating in removal of the delinquent driver from service – Single Judge of High Court directing reinstatement with 50% backwages and deduction there from, of the amount of Rs.500/- by way of damages – However, Division Bench modifying the said order and holding the delinquent driver to be entitled to full back wages on the ground that the Single Judge's order amounted to double jeopardy – Legality of the Division Bench's Order – In view of the provisions of applicable regulations, held, the said case was not one of double jeopardy and in *State v. Nalini*, AIR 1999 SC 2640, held that The well-known maxim "*nemo debetbisvexari proeadem causa*" (no person should be twice vexed for the same offence) embodies the well-established common law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 Cr.P.C. is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts (Para 236). Though Article 20(2) of the Constitution of India embodies a protection against a second trial after a conviction of the same offence, the ambit of the clause is narrower than the protection afforded by Section 300 Cr.P.C. If there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application, while convict and autrefois acquit. In *Union of India and another v. P.D. Yadav*, (2002) 1 SCC 405. In this case General Court Martial while imposing other punishments, had not ordered under Section 71(h) or (k) of the Army Act forfeiture of service of such a person for the purposes of pension, forfeiture of his pension under 16(a) held, in nonetheless permissible and does not amount to double jeopardy – Army Act, 1950, Sections 71(h) and (k) and 73 – Pension – Forfeiture of – Double Jeopardy – Doctrine of – When not applicable – Maxim – "*Nemo debetbisvexari, siconstat curiae quod sit prounaet eademcausa*". *General Manager, State Bank of India v. Anju Jain*, (2008) 8 SCC 475. In our opinion, therefore, if disciplinary proceedings have been initiated against an employee and the charges levelled against such employee are proved and he is punished, it is indeed a relevant consideration for not extending the benefit to dependent of such employee on the ground that he was punished. To us, it cannot be said that it is a case of double jeopardy or a dual punishment. Compassionate appointment is really a concession in favour of dependents of deceased employee. If during his carrier, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependents cannot claim right to the employment. With respect, the learned Single Judge was wholly wrong in observing that such an action would be violative of principles of natural justice. In *Jitendra Panchal v. Intelligence Officer and others*, (2009) 3 SCC 57, held that: the offences for which the appellant was tried and convicted in the USA and for which he is now being tried in India, are distinct and separate and do not therefore, attract either the provisions of Section 300(1) Cr.P.C. or Article 20(2) of the Constitution. In *Sangeetaben Mahendrabhai Patel v. State of Gujarat and another*, (2012) 7 SCC 621, Held that" The fundamental right which is guaranteed under Article 20(2) enunciates the principle of "autrefois convict"

or "double jeopardy" *i.e.*, a person must not be put in peril twice for the same offence. The doctrine is based on the ancient maxim *nemo debits punier pro uno delicto*, that is to say, that no one ought to be punished twice for one offence. The peas of aurefois convict or autrefois acquit avers that the person has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned."

In *State of A.P. v. Gandhi*, (2013) 5 SCC 111, held that *Ex Post facto* penalty whether greater – Reckoning of – Multilayered penalty structure with a maximum penalty – Penalty imposed *ex post facto* greater than intermediate *ex ante* penalty but less-then maximum *ex ante* penalty – No vested right to any intermediate penalty – Validity of imposition such *ex post facto* greater intermediate penalty; *Ex post facto* law prescribing greater punishment, but said punishment being less severe than maximum penalty prescribed *ex ante*, held, valid – Doctrines and Maxims – Double Jeopardy – *Ex post facto* penalty whether greater – Reckoning of Multi-layered penalty structure with a maximum penalty – Penalty imposed *ex post facto* greater than intermediate *ex ante* penalty but less than maximum *ex ante* penalty – No vested right to any intermediate penalty – Validity of imposition such *ex post facto* greater intermediate penalty. Double Jeopardy – *Ex post facto* penalty whether greater – Reckoning of Multi layered penalty structure with maximum penalty – Penalty imposed *ex post facto* greater than intermediate *ex ante* penalty but less than maximum *ex ante* penalty – No vested right to any intermediate penalty – Validity of imposition such *ex post facto* greater intermediate penalty – Criminal Law - Criminal Trial-Defence – Autrefois convict or Autrefois acquit or Double Jeopardy. *Ex post facto* penalty whether greater-Reckoning of - Multi-layered penalty structure with a maximum penalty. Penalty imposed *ex post facto* greater than intermediate *ex ante* penalty but less than maximum *ex ante* penalty. No vested right to any intermediate penalty. Validity of imposition such *ex post facto* greater intermediate penalty. In (2013) 16 SCC 574, held that when a person is convicted or acquitted, another trial in respect of same offence stands debarred – However, if a different offence is made out from the acts of accused, he may be tried again for that different offence even if he was convicted for a pervious offence – Constitution of India – Article 20(2) – Criminal Law – Criminal Trial - Defense-Autrefois convict or Autrefois acquit or Double Jeopardy – Words and phrases – "Double Jeopardy". In *Union of India and another v. Purushottam*, (2015) 3 SCC 779, held doctrine jeopardy in Article 20(2) is circumscribed only to prosecution culminating in conviction *i.e.*, imbibes only principle of autrefois convict, and does not imbibe within it principle that prescribed successive punishment must be of criminal character – Thus, departmental or disciplinary proceedings, even if punitive and even attracting principle of autrefois convict in amplitude are not outlawed by Article 20(2) – Constitution of US – Fifth Amendment – Constitution of the Republic of South Africa (1996) – Article 35(3)(m) – Charter of Rights of the Canadian Constitution – Section 11(b) – International Covenant on Civil and Political Rights, 1966 – Article 14(7) – Constitution of Pakistan, 1973 – Article 13 – U.K. Criminal Justice Act, 2003 – Pt.10 – Criminal Trial – Defense – Autrefois convict or Autrefois acquit or Double Jeopardy – Criminal Procedure Code, 1973, Section 300.

In *CISF v. Abrar Ali*, (2017) 4 SCC 507, held that "Current punishment (*i.e.*, dismissal from service) with respect to charge that respondent delinquent employee had become habitual in committing indiscipline and disorderliness – Passed considering respondent's earlier punishments on account of his acts of indiscipline and negligence – Held, did not amount to double jeopardy.

In *State of Jharkhand through S.P. CBI v. Lalu Prasad and others,* (2017) 8 SCC 1, held Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. This is called the doctrine of double jeopardy. The objective of the article is to avoid harassment, which may be caused by successive criminal proceedings, where the person has committed only one crime. There is a law maxim related to this, *nemo debetbisvexari*. This means that no man shall be put twice in peril for the same offence. There are two aspects of doctrine of jeopardy *viz*. Autrefois convict and Autrefois acquit. Autrefois convict means that the person has been previously convicted in respect of the same offence. Autrefois acquit means that the person has been acquitted on a same charge on which he is being prosecuted. Constitution bars double punishment for the same offence. The conviction for such offence does not bar for subsequent trial and conviction for another offence and it does not matter even if some ingredients of these two offences are common. When the accused is charged with criminal breach of trust or dishonest appropriation of money or other immovable property, it shall be sufficient to specify the gross sum or describe the moveable property in respect of which offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items of exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219 provided that the time included between the first and last of such dates shall not exceed one year. A charge shall contain such particulars as to time and place of the alleged offence and time period shall not exceed one year. Time period and place of the offence is material in such cases. In *State of Mizoram v. Dr. C. Sangnghina*, 2018 SCC Online 2255. The Supreme Court held that when the accused was discharged due to lack of proper sanction, the principles of "double jeopardy" will not apply, and there is no bar for filing fresh/supplementary charge-sheet after obtaining a valid sanction for prosecution.

Conclusion

The rule Double Jeopardy as no person should be punished twice for the same offence. Doctrine of double jeopardy is a right given to the accused to save him from being punished twice for the same offence and he/she can take plea of it. It is a concept originated from "Natural Justice System" for the protection of integrity of the "Criminal Justice System" The concept of Double jeopardy follows the "*audi altermn partum rule*" which means a person cannot be punished twice for the same office. But it is to be noted that here are some restrictions too in the Indian laws related to Double Jeopardy. Article 20(2) of the Constitution clearly uses the work 'and' in a conjunctive sense and it is only where the accused has been both prosecuted and punished for the same offence that a second trial is barred. Even though the right against double jeopardy under Article 20(2) of the Constitution is a fundamental right and under Section 300 Cr.P.C. is a statutory right, the ambit of Article 20(2) is smaller than that of Section 300. The intention of the founding fathers appears to have been not to disturb the existing law which is to be found in Section 300 of the Code of Criminal Procedure relating to the extent of protection against double jeopardy in criminal law of this country.