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OFFENCE ONE: TRIAL MANY

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ABSTRACT

Double Jeopardy is an alien to the people who are unaware of the laws in India and thereby not knowing that a person should not be punished for any offence twice, it is assumed as a general principle and is known to public because of the general ethics or values but not as a proper defined doctrine or rule.This rule has been in consideration over the centuries, has been molded as per the needs of passing time, has been criticized and yet stands as an essential doctrine across the world in many countries. The rule stands as a support pillar for those who are tried to be suppressed into misery of getting penalized again for the same crime or offence they had committed and already been punished for. There is need to understand the depth of concept of Double Jeopardy, its evolution over time and above all its implementation in different situations.

The concept of Double Jeopardy is as complicated as simple it is and as old as neglected it is, but is of great importance and thus, this paper intends to highlight the history, prevalence in India, its comparison to few other countries, some suggestions regarding bringing out more efficiency in implementation of rule of Double Jeopardy in Indian jurisprudence and also the situations where an exemption is provided from this principle.There sometimes arises conflict between the concept of Double Jeopardy and Res Judicata, therefore this papers explains the difference between them according to various precedents and scholars.

DOUBLE JEOPARDY

Double Jeopardy is a defense which protects a person who has been tried for an offence once, not to be tried again for the same offence with the facts being identical. This concept suggests that it is not right for a person to face the same danger or the problem twice which he had already faced and had been either acquitted or convicted for the same in the Court of law. The roots of this can

be found under the maxim, '*Nemodebetbisvexari',* meaning thereby *no man shall be punished twice for the same offence.*[1]

In Common Law, a person against whom the case is filed and he has been acquitted or convicted for some offence; there is another suit filed against the same person for the same offence by the same parties to the previous suit under the same facts then, if such questions are raised in the Court about the trial for same offence being filed, the evidence of the previous trial shall be produced in the Court and if it succeeds the second trial will not take place.[2]

The concept of Double Jeopardy did not come into existence in India after independence, but was present even prior to it. Section 26 of the General Clause Act, 1897,which mentions that when a person does certain act or omission which amounts to an offence under multiple enactments, then such person can be tried under any of those enactments but cannot be held responsible for the same offence again.[3] Also, in the Criminal Procedure Code, old section 403 of 1898[4] and the new section 300(1) of 1973[5] mentions about the concept of Double Jeopardy, a person who has been tried by the Court of competent jurisdiction once and has been convicted or has got acquittal for the offence he has committed, cannot be held liable to be tried again for the same offence, nor for any other offence under the same facts which might have been under section 221 sub-section (1) or sub-section (2) of the same, amidst the time conviction or acquittal of such offence is pertains in force.

After independence, when the Indian constitution was formed, the concept regarding Double Jeopardy was mentioned under Article 20 of the Indian Constitution, which heads as '*Protection*

[1] Double Jeopardy in India, available at http://www.legalservicesindia.com/Article/1633/Double-Jeopardy-in-India.html (last visited Sep 25, 2019)

[2] Guarantee Against Double Jeopardy Academike, available at https://www.lawctopus.com/academike/Double-Jeopardy/ (last visited Sep 25, 2019)

[3]Section 26: Provisions as to offences punishable under two or more enactments - 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. General Clauses Act, 1897, (1897), available at http://indiacode.nic.in/handle/123456789/2328 (last visited Sep 25, 2019)

[4] R. K. P. Sarup, "Double Jeopardy" in Indian law concerning offences committed abroad: Need for a fresh approach, 6 Journal of the Indian Law Institute 104–116 (1964), https://www.jstor.org/stable/43949791 (last visited Sep 25, 2019)

[5] Section 300(1): Person once convicted or acquitted not to be tried for same offence | Code of Criminal Procedure Act, 1973 | Bare Acts | Law Library | AdvocateKhoj, available at https://www.advocatekhoj.com/library/bareacts/codeofcriminalprocedure/300.php?Title=Code%20of%20Criminal%20Procedure%20Act,%201973&STitle=Person%20once%20convicted%20or%20acquitted%20not%20to%20be%20tried%20for%20same%20offence (last visited Sep 25, 2019)

in respect of conviction for offences', and states in its second clause that, *'No person shall be prosecuted and punished for the same offence more than once[6]'.*

A scenario was explained by some writers abroad about the concept of Double Jeopardy; the theoretical aspect of Double Jeopardy creates a will in the Court to think over it time and again about its jurisprudence, perhaps for the reason of taking another scheme with more logic which is better than the previous one, thus attracts more and more adoption of better and general rules or theories that are made for removing the chaos in the theoretical aspect.[7]

The concept of Double Jeopardy tries to protect an innocent person to be tried again and helps in treatment of an individual with respect, so that a person who has suffered a lot of problems by visiting the Court several times, does not has to bear the same pain again because in the society which we live, no one really wants to get involved in the Court cases much because the process is complex and lengthy many a times.[8]

HISTORY OF DOUBLE JEOPARDY

The rule of Double Jeopardy seems to be of prolong doctrinal searches and historical back-cover, such is assumed by the judicial and academic words that have been marked on the concept that a person should be protected from Double Jeopardy.[9]

The legal atmosphere in the ancient times was though different from that of today, but the concept of Double Jeopardy was still partially known to Greeks and Romans.[10]

The rule of Double Jeopardy had its beginning in 12th century; the dispute between Henry II and Archbishop Thomas Becket had led to this. During that time there was existence of two Courts, priestly Courts and the royal Courts. An ecclesiastic was punished for an offence already in the priestly Court, even then the king, Henry II wanted him to be punished in the royal Court also.

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[6] Article 20(2) in The Constitution Of India 1949, available at https://indiankanoon.org/doc/17858/ (last visited Sep 25, 2019)

[7] Ronald Jay Allen et al., The Double Jeopardy Clause, Constitutional Interpretation and the Limits of Formal Logic, 26 31 (1991)

[8] See supra note 2

[9] Jill Hunter, The development of the rule against Double Jeopardy, 5 The Journal of Legal History 1–19 (1984) available at https://doi.org/10.1080/01440368408530792 (last visited Sep 25, 2019)

[10] DOUBLE JEOPARDY Shubhangi-Puneet.pdf, available at http://ijldai.thelawbrigade.com/wp-content/uploads/2017/11/Shubhangi-Puneet.pdf (last visited Sep 25, 2019)

But, Thomas Becket had restrained him from doing so, stating that it would be wrong to punish the man for the same offence again. Subsequently, Becket was killed due to this resistance in 1170. Later on in 1176, King Henry also did not try the ecclesiastic again for the same offence and thus, the rule of Double Jeopardy came into existence. This spread from Roman to English man because they were taught the Roman law and thus the *Res Judicata* concept evolved there in both civil and criminal law.[11]

In 13th and beginning of 14th century, the judgment given in a suit which was approached by an appellant or the ruler, created a stoppage in filing of any future suit on the same offence. In 15th century, any judgment after appeal which had been filed after the trial had taken place by Jury, created a bar on the appellant or the prosecutor for the same offence. In 16th century, Henry VII, completely disagreed with the principle of Jeopardy. Finally it was during the well- known *Vaux's* case, that this concept grew and it was mentioned that if there is an acquittal or a wrong judgment, then suit on another charge can be brought up.[12] 17th century was the time period, which started giving importance to the concept of Double Jeopardy. *Lord Coke's* works gave some hand in it, only partially, the remaining was because of the people in society who were not satisfied with the vagueness in law in the initial part of the century. It happened in the seventeenth century itself, this concept gained importance and developed in becoming a rule or principle under Common Law.[13]

In the 18th century, Blackstone mentioned that, the foremost acquittal has its basis upon the worldwide known maxim in England's Common Law, that, no person for his life should be brought into Jeopardy for the same offence in his life, consequently a person when on fair grounds has been acquitted for an offence in a Court having competent jurisdiction for such offence, then if any more accusation if made on the person for the same offence, he can claim bar on such accusation.[14]

[11]DrManoj Kumar Sadual, *Protection from 'Double Jeopardy': A Constitutional Imperative*, 7 (2015)
[12]VijoyVivekanandan* The Conceptual Analysis Of The Principle Of Double Jeopardy And The Protection Of Human Rights In Criminal Justice Administration Scribd, available at https://www.scribd.com/document/173051195/Accused-An-Indian-Perspective (last visited Sep 26, 2019)
[13] See supra note 11
[14] Ibid.

Till the arrival of 19th century, there was no protection present for a person who was accused and there was to be a retrial of him, which had occurred due to some mistake in judgment or there had been some difference between what had been proved and what had been alleged.[15]

This principle of Double Jeopardy has received attention through several international documents. Today, maximum of the nation worldwide constitute this principle in their constitution, statutes, or some other laws.[16]

SCENARIO IN INDIA

The aim of the Double Jeopardy clause which is provided under Article 20(2) of the Indian Constitution is to prevent a person from being prosecuted and convicted for the same offence, more than once.[17]

The scope of Double Jeopardy is much wider in American rule than India, because Article 20(2) of the Indian Constitution only protects a person against Double Jeopardy if he had been prosecuted and punishment has been provided to him for the offence which was committed by him, i.e. only the concept of *autrefois convict* is applicable in India and not that of *autrefois acquit.* But, *autrefois acquit* is applicable in countries like Britain and U.S.A.[18]

In case of **Kalawati v. State of Himachal Pradesh**[19]**,** a person acquitted on the offence of murder. An appeal by State was filed against such acquittal. The accused under Article 20(2) could not ask for quashing of the appeal against the acquittal; as this Article can only be applied when the accused had been punished and not acquitted, and then an appeal would have been made by the state against him for the same state of facts, but it was not the scene. Thus, he could claim defense under Double Jeopardy provision in the Court of law, as an appeal against the acquittal was simply considered a continuation of the prosecution.

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[15] P. R. Glazebrook, Double Jeopardy. By Martin L. Friedland, Faculty of Law, University of Toronto. [Oxford: at the Clarendon Press. 1969. xxix, 428 and (Index) 11 pp. 90s.net.], 27 The Cambridge Law Journal 315–318 (1969), https://www.cambridge.org/core/journals/cambridge-law-journal/Article/Double-Jeopardy-by-martin-l-friedland-faculty-of-law-university-of-toronto-oxford-at-the-clarendon-press-1969-xxix-428-and-index-11-pp-90snet/7282FB3A312C56E201DCD1852FA11B8F (last visited Sep 26, 2019)

[16] See supra note 11

[17] A.A. Mulla And Others vs State Of Maharashtra And Anr on 28 October, 1996, available at https://indiankanoon.org/doc/775026/ (last visited Sep 26, 2019)

[18] M.P. JAIN, INDIAN CONSTITUTIONAL LAW (LexisNexis 7) (2014) (pg. 1094)

[19] Kalawati And Another vs The State Of Himachal Pradesh on 19 January, 1953, available at https://indiankanoon.org/doc/1596884/ (last visited Sep 27, 2019)

In order to analyse the difference between two offences, the ingredients of both the offences should be compared and not the two complaints that are made alleging the offences.[20]

In **Monica Bedi v. State of Andhra Pradesh**[21]**,** the accused was charged for having a fake passport. She had already been punished in a Portuguese Court for the same facts and had undergone two years of imprisonment. Now, in India she was being prosecuted for the same facts, but the Court did not held it as complete Double Jeopardy, but just reduced the punishment to fine and even the amount of fine was decreased.

When a Court is dissolved and a fresh Court is formed to preserve the interest of the accused, then the claim of Double Jeopardy would not arise because in the first trial, the accused was neither convicted nor acquitted for the offence.[22]

One of the drawback to Double Jeopardy provision in India is that, the former proceedings should be of a criminal nature, which is indicated through the use of the word 'prosecution' in Article 20(2) of the Indian Constitution. Such proceeding should take place only in a Court of law or judicial tribunal, which has the power or the authority to administer it.[23] In the case of **Maqbool Hussain v. State of Bombay**[24]**,** appellant on an airport was caught with illegal gold and consequently the gold was confiscated from under the Sea Customs Act, 1947. Later on, a charge sheet was presented against him in front of Chief Presidency Magistrate under FERA, 1947. In the trial in latter Court he raised defense against this trial, contending that he had already been prosecuted and punished by way of confiscation of gold from him by the custom authorities of sea. The Court held that, the proceedings which had taken place in front of the custom authorities was not a 'prosecution' because, the authorities cannot be covered under the ambit Court of law or any judicial tribunal, thus, the confiscation of gold can also not be considered as a valid punishment under Article 20(2) of the Indian constitution. Therefore, this was not held to be a case of Double Jeopardy by the Court.

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[20] V.K. Agarwal, Assistant vs VasantrajBhagwanji Bhatia &Ors on 7 April, 1988, available at https://indiankanoon.org/doc/1323709/ (last visited Sep 26, 2019)

[21] Monica Bedi vs State Of A.P on 9 November, 2010, available at https://indiankanoon.org/doc/1104661/ (last visited Sep 27, 2019)

[22]O.P.Dahiya vs Union Of India &Ors on 22 November, 2002, available at https://indiankanoon.org/doc/1711323/ (last visited Sep 27, 2019)

[23] See supra note 2

[24]Maqbool Hussain vs The State Of Bombay.Jagjit on 17 April, 1953, available at https://indiankanoon.org/doc/1815080/ (last visited Sep 27, 2019)

A question regarding a crime and an offence of conspiracy to commit crime to be treated as same offence or as a different offences, was put forward in the case of **Leo Roy Frey v. Suptd., District Jail[25],** the petitioner was punished under Sea Customs Act for an offence. Later on, he was prosecuted for criminal conspiracy under the Indian Penal Code. The Court held that, the later prosecution under IPC was for a different offence than the offence under the customs act. The Court also explained that conspiracy always precedes the commencement of crime and is completed before happening of crime, and it is not necessary the commencement of a crime always require conspiracy as its element. Therefore, two are different offences and there is no bar on prosecuting a person for both the offences.[26]

In **Mohinder Singh v. State of Punjab[27],** the appellant was tried under section of IPC and TADA. There was a question about a stengun which was possessed by the appellant, the evidence provided by the prosecution were not believed in the previous trial. Therefore, again prosecution was made. Thus, it was held that there was mistake of the previous Court in not believing the evidences and not punishing the offender for illegal possession of the gun.

A person was convicted under drug laws of U.S.A and was also being tried in India under Narcotic Drugs and Psychotropic Substances Act, 1985. It was held by the Court that the question of Double Jeopardy would not rise because the drugs laws of two countries were quite distinct.[28]

In **State of Haryana v. Balwant Singh[29],** it was held that, departmental proceedings are not covered under Article 20(2), say, a driver who works under some taxi company is held liable for negligent driving, then the taxi company may take fine from him, but the Court even then would have the authority to take his license if a criminal proceeding is held and the departmental proceeding would not create any hindrance in doing so.

[25]Leo Roy Frey vs The Superintendent, District on 31 October, 1957, available at https://indiankanoon.org/doc/1827447/ (last visited Sep 27, 2019)
[26] See supra note 18
[27]Mohinder Singh vs State Of Punjab on 24 September, 1998, available at https://indiankanoon.org/doc/2671446/ (last visited Sep 27, 2019)
[28]Jitendra Panchal vs Intelligence Officer, Ncb&Anr on 3 February, 2009, available at https://indiankanoon.org/doc/1709761/ (last visited Sep 27, 2019)
[29] (2003) 3 SCC 362

In **KollaVeeraRaghav Rao vs GorantlaVenkateswara Rao and Anr[30],** a person was tried under section 138 of the Negotiable Instrument Act and was acquitted. There was a case filed again under section 420 of IPC with the same facts as under the former case. The bench observed that the scope of section 300(1) of Criminal Procedure Code is wider than Article 20(2) of the Indian Constitution, thus this case will fall under the ambit of section 300(1), Cr.P.C. the subsequent suit was dismissed on the grounds that the facts of the former case and this were same, and the person was acquitted by a Court of right and valid jurisdiction, thus cannot be tried again.

Also, if an offence is being committed every day, offence committed is considered as a fresh offence every day, therefore can be tried and be punished separately, this is the concept of continuing offence.[31]

SCENARIO OUTSIDE INDIA

There are many countries which follow the Common Law which enunciates the concept of Double Jeopardy since centuries, and includes the concept of both *autrefois acquit* and *autrefois convict.* Here are some countries and the explanation about the implementation of the principle of Double Jeopardy in each of them.

ENGLAND

The Double Jeopardy defense could be taken in all the cases whether the accused had been convicted or acquitted for the offence, only if the facts on which the second trial is filed are same as that of the first trial. This was the scenario till the Criminal Justice Act, 2003 came into action.

This Act constituted of the offence against second trial can be claimed if some new evidence is found which is strong and material for the case. The Act came into force in year 2005 with a retrospective effect. There were around thirty to forty cases which were found by National Crime Faculty, which could be retried. The Act only provided for 30 serious offences which would not

[30]KollaVeeraRaghav Rao vs GorantlaVenkateswara Rao And Anr on 1 February, 2011, available at https://indiankanoon.org/doc/640825/ (last visited Sep 29, 2019)
[31]Mohd. Ali v. Sri Ram Swarup (AIR 2003 SC 1253)

be included for the claim of Double Jeopardy, but another small or petty offences were still covered under Double Jeopardy if so claimed in those cases.[32]

After the Stephen Lawrence murder case, it was recommended by Macpherson Report to remove the rule of Double Jeopardy in acquittal cases of murder where new and fresh evidence is found. Later on, the Law Commission under its report, "Double Jeopardy and Prosecution Appeals" (2001), included the recommendation and this is how it came into picture.[33]

The inquiry report of Stephen Lawrence murder case was presented before the Parliament. The facts in the report were stated as the victim with his friend was standing on the bus stop, in wait of the bus in the night time. He went onto the street to see if the bus was coming or not. The friend of his saw several people standing on the opposite side of the road who were liable for the murder of the victim. His friend shouted to ask him whether he saw the bus or not, immediately the accused persons said something and reached the victim and started beating him. There were several severe injuries on the body of the victim. His friend started running and asked him to do the same. The victim ran around 130 yards and collapsed. It was submitted by the medical department that it was the health maintenance of the victim because of which after such serious wounds he ran this much distance. The report submitted also mentioned that the victim was dead before the ambulance came to take him. The accused persons were charged of murder out of racial hate because the victim was a Black British, but were acquitted.[34]

After the retrospective effect of Criminal Justice Act, 2005, this was one of the most important cases that was to be looked into, for new evidences and witnesses were found.

Another case was of the pizza delivery girl, Julie Hogg, who was murdered in her home due to sex attack on her. Her boyfriend was accused for her murder but was acquitted. This case longed back to 1989. After the removal of the rule Double Jeopardy for serious offences which included rape and murder, this was the first case which was tried. The accused accepted the conviction

[32] Double Jeopardy law ushered out, Apr. 3, 2005, available at http://news.bbc.co.uk/2/hi/uk_news/4406129.stm (last visited Sep 28, 2019)

[33] Did you know that the U.K. repealed "Double Jeopardy" in 2005? Josh Blackman's Blog, available at http://joshblackman.com/blog/2013/06/14/did-you-know-that-the-u-k-repealed-Double-Jeopardy-in-2005/ (last visited Sep 28, 2019)

[34] Tom Cook & Richard Stone, THE STEPHEN LAWRENCE INQUIRY, 389

and pleaded guilty and was given imprisonment for seventeen years in 2006.[35] The recent update in this case is that, Billy Dunlop, who was the accused in this case, was to be released in 20203 but is going to be shifted in open prison and will get out on parole in 2021. On this news the parent of the victim stated that, they were going to fail again for getting the justice for their daughter.[36]

GERMANY

Article 103(3) of the Germany's constitution constitutes the rule of Double Jeopardy and mentions that no man shall be given punishment for the same offence more than once for implementation of general legislation.[37]

In 1982, a German doctor was accused of rape and killing his French step-daughter. The daughter's father filed a suit both in France and Germany. In the German Court, the doctor was acquitted inspite of having trials for four years, therefore the case was closed in Germany because there no sufficient proofs against him. But, the French Court did not close the case and convicted him. The appeal of Double Jeopardy against the doctor was raised in the French Court. But, the Court denied it stating that the Double Jeopardy can only apply in the same nation and not in different nations, thus the trial was valid and the doctor was convicted and given punishment for the offence.[38]

In 2008, a doctor named Dr. Daniel Ubani, was held liable for manslaughter done involuntarily, and was given nine months of probation along with fine. The patient was European. The European authorities asked for extradition of Dr. Ubani, but it was not accepted by the Germany because the doctor had already been punished for his act in Germany and taking him to Europe and again prosecuting him would be a case of Double Jeopardy.[39]

JAPAN

[35] Justice at last: killer pleads guilty in Britain's first Double Jeopardy trial the Guardian, available at http://www.theguardian.com/uk/2006/sep/12/ukcrime.topstories3 (last visited Sep 28, 2019)
[36] Double Jeopardy killer release "too soon," BBC News, Jul. 18, 2018, available at https://www.bbc.com/news/uk-england-tees-44877908 (last visited Sep 28, 2019)
[37] See supra note 2
[38] Human rights Court upholds French verdict against German despite Double Jeopardy appeal | DW | 29.03.2018 DW.COM, available at https://www.dw.com/en/human-rights-Court-upholds-french-verdict-against-german-despite-Double-Jeopardy-appeal/a-43187429 (last visited Sep 28, 2019)
[39] No Double Jeopardy for German doc who killed UK patient - The Local, available at https://www.thelocal.de/20090508/19159 (last visited Sep 28, 2019)

Article 39 of the Japan's constitution states about Double Jeopardy, mentioning that no person whose act was lawful at the time it was committed shall be held liable criminally, or was acquitted for the act, and shall not be put to Double Jeopardy.[40]

In 1950, Supreme Court gave decision that the trials regarding the same offence which are held in District, High and Supreme Court will be considered as a single Jeopardy. Therefore, an appeal after acquittal does not amount to Double Jeopardy, only the acquittal by the Supreme Court is the final acquittal. This law has been challenged a lot of times but there has been no changes to it.[41]

In 1997, a person named Mainali, was charged for robbery and murder. He was accused of murdering a lady who had worked in some electrical company and did second job of a prostitute. The accused in the District Court was acquitted, but the Tokyo High Court on the same evidences convicted him, and gave him imprisonment of 15 years. When the accused got released in 2012, the lawyers made many remarks of removing the concept of appeal against acquittal in Japan and consider it as Double Jeopardy as the other countries in the world have the concept.[42] There has been a lot of debate about the nature of the Double Jeopardy clause in Japan but still the superior Court upholds the decision passed in 1950.

There was a case in 2010, where a man who was 61 years of age was acquitted. He was accused of smuggling stimulants from Malaysia to Japan, but he contended that he was not aware about the substance that was in the packet because it was given to him to deliver it to his friend by a client and was mentioned that it had chocolates. Therefore, the District Court acquitted him on the basis of doubt. This judgment was given by 6 lay judges and 3 professional judges. An appeal was made in High Court, and the judgment of District Court was over-turned. When the case went to Supreme Court, it provided certain guidelines as to in what circumstances the High Court can over-turn the judgment of the lower Court. It was mentioned that, when the judgment given by the lower Court is not on logical grounds or out of common sense, then only the High

[40]Double Jeopardy and the Japanese Law Wrongful Convictions Blog, available at https://wrongfulconvictionsblog.org/2012/12/06/Double-Jeopardy-and-the-japanese-law/ (last visited Sep 28, 2019)
[41] Ibid.
[42] Setsuko Kamiya, Double Jeopardy practice scrutinized, The Japan Times Online, Dec. 4, 2012, available at https://www.japantimes.co.jp/news/2012/12/04/national/Double-Jeopardy-practice-scrutinized/ (last visited Sep 28, 2019)

Court reverse the judgment otherwise not. Since, in the above case there were experts on the bench, the District Court's judgment was upheld by the Supreme Court.[43]

U.S.A.

The clause of Double Jeopardy was inserted through the 5th Amendment to the constitution, which mentions that no person shall be put to Jeopardy of life or limb for the same offence twice.[44]

The Supreme Court held that the prevention of subsequent trial after the former trial would apply to all the criminal offences, immaterial of the punishment which is potential. But, there are certain conditions which would not prohibit a second trial. If a person had accused of the offence was never put under a legal proceeding or Jeopardy, then there is no bar on trial against him for the same offence. If the Jeopardy against a person has ended, then there cannot be a subsequent trial; the end of Jeopardy would generally happen, when there is verdict of acquittal by the Court, or some when the trial is held as mistrial by the judge. Also, there cannot be re-prosecution for the same offence; same offence as per federal and state Courts is decided by applying various test, like, whether the facts of the case have been be already litigated, the actual evidence must have been produced before the Court, the criminal acts that have been alleged had been part of same transaction or whether the prosecution against the defendant is second time for the same offence[45].

In the case of **Breed v. Jones[46],** it was held that if a person has been already tried as a juvenile, then he cannot be tried as an adult for the same offence because when he was a juvenile the Court had the option to treat him as an adult according to the intensity of the offence he was charged of.

[43] Ibid.
[44] Double Jeopardy LII / Legal Information Institute, available at https://www.law.cornell.edu/wex/Double_Jeopardy (last visited Sep 28, 2019)
[45] Double Jeopardy Findlaw, available at https://criminal.findlaw.com/criminal-rights/Double-Jeopardy.html (last visited Sep 28, 2019)
[46] Breed v. Jones, 421 U.S. 519 (1975) Justia Law, available at https://supreme.justia.com/cases/federal/us/421/519/ (last visited Sep 28, 2019)

DIFFERENCE BETWEEN DOUBLE JEOPARDY AND RES JUDICATA

The concept of res judicata can be found under the civil law of India and of Double Jeopardy under the constitution, criminal law and general clauses act. In many of the cases there has been an explanation provided as to what constitutes to be res judicata and what to be Double Jeopardy. There have been cases where confusion between the two has arisen and the Courts time and again provided the distinction between the two.

The very basic difference between Double Jeopardy and res judicata is that, res judicata is attracted in cases where the offences may not be the same but the facts of the former and subsequent case are same, whereas the Double Jeopardy is applied in cases where the offences involved in both the cases are same.[47]

In the case of **Sambasivam v Public Prosecutor, Federation of Malaya**[48], it was explained that the rule of res judicata was explained and it was stated that it would apply not only to criminal cases but also to civil cases where the facts of the cases are same in both former and subsequent suit.

In the case of **SangeetabenMahendrabhai Patel vs State of Gujarat &Anr**[49], the Court described difference between res judicata and Double Jeopardy. The Court mentioned that, there had been trial of the appellant under section 138 of the Negotiable Instrument Act and that was under sub judice in the High Court. In this case he is charged under the sections of IPC which were section 406, 420, 114. The Court observed that the section under the Negotiable Instrument Act which he was tried for did not included the mental element i.e. mens rea whereas under IPC's section it is a relevant factor. The seriousness of offence under IPC is more than that of the Negotiable Instrument Act. Filing of a complaint is a mandate under Negotiable Instrument Act whereas such is not there under IPC. The Court has also mentioned that when an issue of fact has been already tried by a Court of competent jurisdiction, the helding has been in the favor of the

[47] See supra note 10

[48] Sambasivam v The Public Prosecutor, Federation of Malaysia (Malaya) | [1950] AC 458 | Privy Council | Judgment | Law | CaseMine, available at https://www.casemine.com/judgement/uk/5b2897ce2c94e06b9e19b6aa (last visited Sep 29, 2019)

[49] SangeetabenMahendrabhai Patel v. State Of Gujarat And Another | Supreme Court Of India | Judgment | Law | CaseMine, available at https://www.casemine.com/judgement/in/5609af1be4b0149711415a1f (last visited Sep 25, 2019)

accused, such helding would create res judicata on the prosecution for using the same evidence in some subsequent trial against the accused for some other offence which would create disturbance in the findings of the fact of the subsequent case, but would not create any hindrance for accusing the person for another offence. The rule of res judicata is different from the Double Jeopardy rule. Double Jeopardy protects the trial of any offence which had already been tried and the punishment had been provided for the same whereas the res judicata only mentions about the acceptance of the evidence in a subsequent suit. Thus, in the present case, the facts of both the cases may be similar, but the offences are different because the ingredients of the offences are not the same. Therefore, there is no bar on the subsequent suit.

When a person accused is not found guilty for the offence by the Court of competent jurisdiction, then if later on some other case is filed on him for some different offence then, the court must go on with the latter suit, immaterial of the former suit because the offences involved are different. It is very much necessary that the parties to the suit must be same in both the cases for res judicata rule to be applied. If the evidence used to prove the former offence is again used in the second case also, then there would be res judicata applied on the subsequent suit and not Double Jeopardy rule.[50]

EXCEPTIONS TO DOUBLE JEOPARDY

The Double Jeopardy rule sometimes fails. There are certain situations where this principle will not apply because of some circumstances which prevent the application of this rule, thus these situations are exceptions to Double Jeopardy.

In India, Double Jeopardy does not apply when a person is prosecuted for crimes under different acts, when the trial is quashed by the court for the interest of the accused, when prosecution is done after mere enquiry, when the facts are different though the parties and offences are same, when there is continuous offences done by a person, when there has been an acquittal in the previous trial, when the suit is of civil nature, when offences are same but their ingredients are different. These all have been given and discussed in different cases in the courts of India.

[50] Distinction between Issue-estoppel or Res Judicata and Double Jeopardy or Autrefois Acquit World's Largest Collection of Essays! Published by Experts, available at http://www.shareyouressays.com/knowledge/distinction-between-issue-estoppel-or-res-judicata-and-Double-Jeopardy-or-autrefois-acquit/119413 (last visited Sep 29, 2019)

In countries other than India, say U.S.A, there are only four conditions provided where in if a case is done after any of these four conditions are satisfied would amount to Double Jeopardy otherwise not; the four conditions are, acquittal, dismissal, mistrial and appeals. If Jury gives a verdict of acquittal, it cannot be changed even if it is appealed and there are strong evidences for doing so. When there two offences involved, where one is a serious crime and other is an petty offence, the Jury if provides a verdict where it is silent about the serious offence and has only mentioned about the petty one, there cannot be prosecution for the serious offence again, it is barred. The trial courts provide dismissal in a situation of defects and errors in proceedings. A dismissal for lack of evidence will act as a bar on further prosecution, but if the Jury has given a guilty verdict and if on appeal by the prosecution, the dismissal is over-turned, then the verdict of the Jury will be restored without any further proceedings or trial. But, a dismissal provided for lack of evidence before the verdict is given by the Jury, may not be appealed. When a case is dismissed on the grounds other than the insufficiency of evidences, on the request of the defendant, then re-prosecution is not barred. When it is not possible for a case to be finished because of defective indictments, or the Jurors are not well qualified, then mistrials are provided for it. But, if mistrials are given with the consent of the defendant, then it will not create a hindrance on prosecuting again; mere silence of defendant does not amount to consent. A mistrial granted in a situation where it was impossible to not provide it, will be bar on further prosecution. But, if mistrial could have been avoided and was not absolute necessity, then further prosecution is not barred. An appeal filed by the defendant (every defendant has one chance of appeal only) on the grounds of lack of evidence and if he is acquitted, there is bar on further prosecution, but if the ground for appeal is other than this, then there is no bar on another trial. Though there is risk for the defendant, that if re-trial happens he may be provided with more severe punishment than before, still there is bar on giving death sentence in re-trial, if life imprisonment was provided in the first trial.[51]In England, there are only 30 crimes which are put out of the domain of double jeopardy.

SUGGESTIONS

[51] When Double Jeopardy Protection Ends Findlaw, available at https://criminal.findlaw.com/criminal-rights/when-double-jeopardy-protection-ends.html (last visited Oct 1, 2019)

There are some suggestions as to what changes can be brought up to make the rule Double Jeopardy more efficient.

1. The applicability of res judicata on criminal cases should be barred, because it can be misused in criminal cases showing the similarity in the evidences.
2. The severe offences should be removed from the ambit of double jeopardy where the concept of *autrefois acquit* is prevailing.
3. If there are some new evidences found, trial must be allowed. The discovery of evidences though should be brought within a reasonable time. It should not be that the accused has served the sentence and after that based on new evidence he is being tried for the offence.
4. The concept of *autrefois convict* should only be present in rule and *autrefois acquit* concept should be removed, if possible.
5. If a person is acquitted by a lower court, on appeal should only be convicted if there are new evidences found, otherwise the court should claim it as double jeopardy.
6. If a person convicted and imprisoned for an offence, for which he had accepted the blame, after the completion of sentence claims that the acceptance of guilt was not done voluntarily by him, should be barred from doing so and such cases should be covered under double jeopardy.