

# LEGALFOXES LAW TIMES

## ARTICLE 20(2) - DOUBLE JEOPARDY

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### Abstract:

The roots of the doctrine of Double Jeopardy can be traced back to the Latin maxim “*Nemo debet bis vexari*” which means a man should not be put in peril twice for the same offence. The statutory prohibition against ‘double jeopardy’ was meant to prevent a person from facing the consequences of being charged and potentially prosecuted for the same suspected crime more than once. In this research paper, the researcher aims at analysing the Indian perception of the Doctrine of Double Jeopardy, the difference between the Indian and the other international perspective of the doctrine and the evolution that has been witnessed by the courts regarding the same. Although the Indian courts have analysed the doctrine in a stricter sense, it is evidently given great importance in order to protect the fundamental right of the citizens. The paper also explains how the courts have given judgements on various cases with the help of landmark cases containing the doctrine of Double Jeopardy.

### Review of Literature:

- **Das, Tirthankar (2008):** in the research paper titled “A discussion on the law of Double Jeopardy in India” highlights the evolution of the Doctrine of Double Jeopardy and the context of it in the Indian Constitution. The concept of Double Jeopardy traces its origin back to AD 391. While explaining the concept of Double Jeopardy in the Indian Constitution the researcher has used case laws in order to explain the intricate details that surround the concept and the minute details that are taken into consideration while determining whether a case falls under the ambit of the same. The paper also explains Double Jeopardy under the Criminal Procedure Code and mentions how the concept of

Double Jeopardy is perceived in different countries. The paper concludes by stating that people prefer the Constitution over the CrPC to refer to Double Jeopardy since it provides for a better safeguard.

- **Carissa Byrne Hessick & F. Andrew Hessick (2011):** in the research paper titled “Double Jeopardy as a Limit on Punishment” explains the core implementation of double jeopardy is to limit the government’s ability to impose punishments of the guilty repeatedly for a single offence. The paper also highlighted that the doctrine does not protect or immune the accused from an offence. It merely protects the individuals against a second prosecution for the same offence. However there has been a failure of determining the extent of boundaries of the principle and hence depends on case-to-case basis. Due to change in times, the researcher suggest that the concept of double jeopardy has been misinterpreted. Instead of focusing on avoiding multiple punishments there has been greater emphasis on avoiding multiple prosecution which defeats the entire purpose of the clause.
- **Amartya Bag (2014):** in the article “Double jeopardy and the law in India” the author explains the principle of Double Jeopardy and also mentions the concept as it is explained in different laws. The article mentions the General Clause Act as well the CrPC and explains the concept as well as its scope in the respective laws. The article makes a brief mention of the principle as it is understood by the American legal system and the difference between the Indian and American understanding of the doctrine while mentioning that the Americans have a wider aspect of the same. The article also mentions many limitations and the essence of the principle. Most of which are explained through cases as it has evolved with time among different courts.
- **Dr. Manoj Kumar Sadual (2015):** in the research paper titled “Protection from ‘Double Jeopardy’: A Constitutional Imperative” explains the Constitutional applicability of the principle of Double Jeopardy and how it protects the fundamental rights of the person who is accused for the crime. The research paper also mentions how the concept of Double Jeopardy in the U.K and USA have a wider scope. This is because they consider the second prosecution irrespective of whether the accused was acquitted or convicted whereas the Indian law only grants protection under Double Jeopardy if there has been punishment sought for the same offence. If there is no punishment for the offence the

defence of Double Jeopardy cannot be claimed. The paper also lists requirements of conditions for applicability of the principle with the help of case analysis.

- **Dr. Sandeep Kumar (2015):** in the research paper titled “Double Jeopardy Jurisprudence in India” in the research paper analysis the principle of Double Jeopardy and the idea underlying the doctrine. It aims at finding out the Indian position regarding the pertinence of the principle. The research paper mentions that for the applicability of Double Jeopardy there are a few conditions that have to be met. In order to claim defence under this principle there has to be not only a prosecution but also a “punishment” for the same offence, without which the doctrine of Double Jeopardy shall not be applicable. The Article clearly states protection in cases where the person claims “autrefois convict” meaning he has already been tried and convicted for the same offence. The paper also mentions that the Constitutional protection would be an extraordinary remedy which would in-turn serve the entire purpose of the doctrine.
- **Adv. Shipra arora (2017):** in the article “Double Jeopardy - Can an accused be actually punished twice for same offence in India” explains that while the doctrine of Double Jeopardy prevents the punishment of an accused for the same offence twice, can the accused be punished twice for the same offence in India. The article also aims at understanding the principle under the Indian context and what are the limitations of the same. The article also highlights that Double Jeopardy is not applicable for continuing offence and hence the defence of the same cannot be claimed. The article lays great emphasis on the words “the same offence” which highlighting that the meaning of these words is taken in its literal sense i.e., the offences should be identical in order to claim a defence under this principle. It also mentions that acquittal is very important in these cases.
- **Alexbennyhook (2019):** in the article explains Double Jeopardy as a procedural defence and the partial protection provided under the same by the Indian Constitution. However, this protection is subject to certain limitation and conditions on the fulfilment of which the accused is granted immunity for the same offence. The article mentions that it is important to determine when the protection under double jeopardy begins and ends since the detention of an individual is not allowed for additional proceedings under the same issue once immunity has been granted. The article, with the help of a case law, explained

that double jeopardy is not applicable when the person is convicted under a different law. The court mentioned that merely being charged by provision under a certain act does not grant immunity under different offences and different laws and the individual can be tried for the same.

- **Ashish Agarwal (2019):** in the article titled “Analysis of the Principle of ‘Double Jeopardy’ In India” mentions that since the principle of Double Jeopardy is included in Part III of the Constitution it is a fundamental right and hence the duty of the state to ensure the violation of the same does not take place. The article also mentions cases where the Courts have held the Doctrine of Double Jeopardy as a basic human right. Although it is not a new concept and existed under the Government of India Act, 1935 it was later recognised as fundamental right as well as a legal one. The article also discusses about the principle under CrPC and the General Clause Act, 1897.
- **Mohini Chaturvedi (2019):** in the article “Doctrine of Double Jeopardy” lists the ingredients that constitute to the applicability of the principle of Double Jeopardy. The article also explains the origin of the concept and the evolution of the same over the years. The principle of Double Jeopardy traces its origin back to the Greeks and Romans and was finally recognised in the Justinian Digest. It also mentions that the principle has been incorporated from the English Common Law Maxim which translates to a man cannot be tried twice in peril for the same offence. The article also lists cases which highlight different aspects of the principle highlighted by courts since there are no straight rules or limitation laid out. The concept of Double Jeopardy has been evolved through the help of cases.
- **Ashwin Pandey (2020):** in the article “The Doctrine of Double Jeopardy in India” explains the origin of the doctrine of Double Jeopardy and its relevance in today’s time. The article mentions that the Doctrine has recognition in a plethora of international documents and forms a crucial part of the legal system. Although borrowed from the 5<sup>th</sup> Amendment of the U.S. Constitution, the Indian understanding of the principle is narrower as compared to the International perspective and it is analysed in a very strict sense so as to not protect the guilty and apply the same only in cases which are truly worthy of the defence. The article, with the help of cases, lays great emphasis on the factor that the accused must be given a punishment and after having suffered for the same

can the appeal for Double Jeopardy be taken in the courts. Without a prosecution, serving of a sentence and undergoing the punishment for the exact same offence the defence of Double Jeopardy cannot be pleaded.

### **Research Methodology:**

The research paper is based on a critical analysis of the Doctrine of Double Jeopardy and its place in the Indian Constitution. The research paper aims at highlighting the revolution that has taken place in Article 20(2) of the Constitution and how it is important to prohibit multiple punishments for the same offence. It plays an important role to protect the integrity and precious fundamental rights of the accused. The researcher has relied on secondary data due to time and money constraint. Secondary Data was collected through various sources such as books, journals, magazines, seminars and conference papers, thesis reports, website reports, published books, articles, published interviews and newspapers, etc.

### **Content Analysis:**



### **Double Jeopardy:**

According to Black Law's Dictionary, Double Jeopardy is defined as "A second prosecution after a first trial for the same offense."<sup>1</sup> The principle of Double Jeopardy is based on the maxim "*Nemo Debet Bis Puniri Pro Uno Delicto*" which means "No man ought to be punished twice for one offense."<sup>2</sup> Thus Double jeopardy simply refers to the act of putting a person through a second trial of an offence for which he or she has already been prosecuted or convicted.<sup>3</sup>

### **Historical Background:**

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<sup>1</sup>Bryan A Garner & Henry Campbell Black, Black's law dictionary (1 ed. 1999)

<sup>2</sup>Amartya Bag, *Double jeopardy and the law in India*, iPLEADERS (2014), <https://blog.iplayers.in/double-jeopardy-and-the-law-in-india>.

<sup>3</sup>Houghton Mifflin Harcourt Publishing Company, *The American Heritage Dictionary entry*., <https://www.ahdictionary.com>).

It has been said that the history of double jeopardy is the history of criminal procedure.<sup>4</sup> The law is believed to have arisen in a conflict between Henry II and Archbishop Thomas a Becket over whether clerks imprisoned in ecclesiastical courts should be excluded from further prosecution in the King's courts because doing so would break the principle (nemo bis in idipsum) that no man should be prosecuted twice for the same crime. This maxim derives from St Jerome's commentary on the prophet Nahum in AD 391: "For God does not judge twice for the same crime."<sup>5</sup>

### **Doctrine of Double Jeopardy under the Indian Constitution:**

The Indian perception of the Doctrine of Double Jeopardy is narrower as compared to the U.K and the USA. The Indian Constitution has recognised the concept of Double Jeopardy as a crucial part of the legal system and thus given it the due recognition. The Indian Constitution mentions Double Jeopardy in Article 20 sub-clause 2 and states that "No person shall be prosecuted and punished for the same offence more than once."<sup>6</sup> The analysis of the doctrine is stricter in Indian Courts by Judges and has been recognised as a fundamental right. It is enshrined in Part III of the Constitution to prevent the states from punishing an accused for the same offence more than once. Along with a Fundamental right it is also recognised as a legal one and has played a crucial role in the legal system. Although the Doctrine seems simple to the common man it is backed by many limitations and is granted only in specific cases where all the ingredients of the principle have been met.

The Indian provision enunciated only the principle of "autrefois convict" and not the principle of "autrefois acquit."<sup>7</sup> Therefore, Art. 20(2) means that in order to claim a defence under this article there has to be a prosecution as well as a punishment for the same offence.

The word "prosecution" under Art. 20(2) lists three of the following essentials:

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<sup>4</sup>Double jeopardy (Book, 1969) [WorldCat.org], , <https://www.worldcat.org/title/double-jeopardy/oclc/15805>.

<sup>5</sup>Friedland M L, Double Jeopardy (1969) Clarendon Press, Oxford at 5.

<sup>6</sup>Article 20(2) in The Constitution of India 1949, 2, <https://indiankanoon.org/doc/17858>.

<sup>7</sup>Das, Tirthankar. (2008). A Discussion on Law of Double Jeopardy in India. SSRN Electronic Journal. 10.2139/ssrn.1303324.).

- There must be a person accused of an offence. The word 'offence' has to be taken in the sense in which it is used in the General Clauses Act.1897 as meaning “an act or omission made punishable by any law for the time being in force.”<sup>8</sup>
- The proceeding or the prosecution should have taken place before a ‘court’ or ‘judicial tribunal’. The revenue authorities like the sea custom authorities, are not judicial tribunals.<sup>9</sup>
- Likewise, proceedings before a tribunal which entertains departmental or administrative enquiries cannot be considered as proceedings in connection with prosecution and punishment.<sup>10</sup>

In order claim a defence there are certain ingredients that need to be fulfilled. The accused seeking defence under Art. 20(2) should be found guilty for the exact same offence which is identical to the initial one for which he has been punished. Mere prosecution does not amount to a claim under this article. The accused should have undergone punishment for the same without which this article does not apply. The applicability of Double Jeopardy cannot be invoked if it is under different law or different jurisdiction. An individual found guilty under marine laws and paid a fine for the same can be tried under the IPC and the defence of Double Jeopardy will not be granted given the difference in law. Basically, the conditions that need to be satisfied are:

- i. There should be a previous conviction or an acquittal;
- ii. The conviction or acquittal must be by a court of competent jurisdiction; and
- iii. The following proceeding must be for the same offence.

#### **Landmark cases:**

In the leading case of *Maqbool Hussain v. State of Bombay*<sup>11</sup>, a person who arrived at the Indian airport from abroad was found in possession of gold which at the time was against the law. The Customs Authorities took action against him and the gold was confiscated however, he was later prosecuted under the Foreign Exchange Regulation Act before a criminal court. The Supreme Court in this case held that the proceedings before the customs authority did not constitute to

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<sup>8</sup>S. A. Venkataraman v. Union of India, AIR 1954 SC 375; V. N.Shukla, "Constitution of India", 10th ed., 2001, rep. 2004, p. 156.

<sup>9</sup>Maqbool Hussain vs The State Of Bombay.Jagjit, AIR 1952 SC 325, <https://indiankanoon.org/doc/1815080>.

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

prosecution and the penalty imposed did not amount to punishment. The Supreme Court ruled that the sea customs authorities are not a judicial tribunal, and that the confiscation, enhanced rate of duty, or punishment levied by them under the terms of the Sea Customs Act may not constitute a decision or order of a court or judicial tribunal needed to justify the argument of Double Jeopardy.

In the case of *Venkataraman v. Union of India*<sup>12</sup>, The appellant was investigated by the investigation commissioner under the Civil Sector Enquiry Act of 1960, and as a result, he was discharged from the service. Later, he was charged with violating the Indian Penal Code and the Prohibition of Corruption Act. The court ruled that the investigation commissioner's proceeding was simply an inquiry and not a trial for a crime. As a result, the second prosecution was not subject to the doctrine of double jeopardy or the protection provided by Article 20(2) of the Constitution.

In the case of *Institute of Chartered Accountants of India v. Vimal Kumar Surana*<sup>13</sup>, the defendant was charged under the provisions laid down by the Chartered Accountant Act of 1949. The court in this case held that because a person has been charged under a different law does not grant him immunity under Double Jeopardy. The court held that just because he is convicted under the terms of said act does not guarantee him immunity from punishment because the nature of the offence varies and he can be charged under a range of statutes, including the Indian Penal Code.

### **Conclusion:**

The “underlying principle” of double jeopardy is to prevent a person from being punished again, which will lead him to live in a perpetual state of fear and uncertainty. The doctrine of Double Jeopardy has clearly established its importance in the Indian as well as other legal system all

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<sup>12</sup>S.A. Venkataraman vs The Union Of India And Another on 30 March, 1954, , <https://indiankanoon.org/doc/1640660>.

<sup>13</sup>Inst.Of Chartered Accountants Of ... vs Vimal Kumar Surana & Anr on 1 December, 2010, , <https://indiankanoon.org/doc/878138>.

across the world. The doctrine recognises the rights of the accused and prevents the imposition of punishment for a sentence which has already been served. This right intends to protect the interest of the citizens from the state and has been recognized as a fundamental right. Although the Indian understanding of the principle is comparatively a narrow one it is given due recognition in different cases along with strict analysis of each aspect depending on the facts and circumstances of the case. It is also established that the discussions based on the Doctrine of Double Jeopardy is far more elaborate in CrPC as compared to the Indian Constitution.

