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THE JUDICIAL PERSPECTIVE OF DOUBLE JEOPARDY IN INDIA

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INTRODUCTION

The Indian legal system has a rule against double jeopardy. The French terms "Autrefois Acquit" and "Autrefois Convict," which literally translates to "already acquitted" and "previously convicted," respectively, are where the phrase "Double Jeopardy" first appeared. These two expressions have their roots in common law, where they are recognised as the pleas of autrefois acquit and autrefois convict. These two pleas have the effect of preventing the trial from proceeding because of the unique circumstances they represent. A plea of autrefois acquit implies that a person cannot be tried for the same crime again because he has already been found not guilty of it, and it can be entered alone or in conjunction with a plea of not guilty. A similar defence known as autrefois convict, which can be used in conjunction with the plea of not guilty, prevents a person from being tried for the same offence for which they have already been found guilty. Nonetheless, the Theory of Autrefois Acquit and Autrefois Convict is the collective name for these two concepts. In a sense, this approach is a return to double jeopardy. The prohibition against double jeopardy states that a person cannot be tried for the same crime if they have already been found guilty or not guilty of it in the previous trial. Many nations, including India, have made protection from double jeopardy a fundamental right. The United States, Canada, Israel, and Mexico make up the other nations. However, in light of Section 300 of the Code of Criminal Procedure, 1973, Art. 20(2) of the Indian Constitution, and Sections 40, 41, 42, and 43 of the Indian Evidence Act, 1872, we shall specifically evaluate this doctrine of Autrefois Acquit and Autrefois Convict in the Indian context.

No one shall be tried and punished for the same offence more than once, according to Article 20(2) of the Indian Constitution, which guarantees this protection as a basic right. Section 26 of the General Clauses Act of 1897 is based on the same idea.

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CHAPTER I: HISTORY & ORIGIN OF DOUBLE JEOPARDY

The origin of the term "Double Jeopardy" is historical. It has been claimed that the history of criminal procedure is also the history of double jeopardy. The rule is said to have originated after a dispute between Henry II and Archbishop Thomas a Becket on the exclusion of clerks from future punishment in the King's courts due to the maxim (nimo bis in idipsum) that no man should be punished twice for the same offence. As stated in St. Jerome's exegesis on the prophet Nahum in AD 391: "Because God judges not twice for the same offence," this adage originated. The common pleas "autrefois acquit" and "autrefois convict" later gave expression to this rule. 4 A defence known as autrefois convict was based on the merger theory and asserted that the defendant had previously been tried and found guilty of the identical crime. The avoidance of "behaviour that had previously been the subject of curial imposition of a sentence of punishment" was the goal that was set out to be accomplished. A defence known as autrefois acquit, which was based on estoppel, asserted that the defendant had previously been tried and found not guilty of the identical offence. The pleas were used in the context of a criminal code that had very few offences and few instances in which a certain fact pattern might result in several offences. But, during the past 100 years, criminal law has multiplied, criminal procedure has been modernised, and modern criminal institutions have been developed. As a result, a more comprehensive double jeopardy rule has been created, which more effectively implements its guiding principle—that no one should be subjected to legal proceedings twice for the same offence. The earliest court declaration of a cogent general concept on the rule was made in Connelly v. Director of Public Prosecutions (UK) [1964] AC 1254[2] The accused must have been placed in danger of conviction for the same offence as the one with which he is now charged for the doctrine of autrefois to be applicable. The term "offence" refers to both the elements of a crime and the features required by law for it to be considered an offence. The offence must be the same in both fact and law for the doctrine to be applicable. "The underlying idea is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence [sic], thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty". The

[2] Connelly v Director of Public Prosecutions: HL 1964

primary justifications for continuing to apply the double jeopardy rule are encapsulated in this sentence. The most important of these is that a rule like this is required to prevent erroneous convictions. Exposure to the (flawed) trial process repeatedly raises the probability of this happening.

CHAPTER II: INDIAN LAWS ON DOUBLE JEOPARDY

No one should be put in danger twice, according to the "double jeopardy" clause of Article 20(2) of the Constitution. Section 403 of the Code of Criminal Procedure (Old), which addresses "double jeopardy," was left intact by the country's founding fathers. The Code of Criminal Procedure's Section 300 (403 old) is replicated in Article 20(2). A discharged defendant may be tried again under the Code. Article 20 only forbids a second trial if the accused has already been tried and sentenced for an identical offence. The identical offence must have been investigated, convicted, and punished for benefit beneficiaries. The scope of Section 403(1) goes beyond Article 20 (2). Article 20(2) forbids retrial for the same offence following conviction and sentencing, but Section 403(1) clearly incorporates the idea that the plea agreements are effective (autrefois acquit as well as autrefois convict).

To prevent someone from being tried twice for the same offence, Section 300 of the Code of Criminal Procedure should be followed. Compared to Article 20(2) of the Indian Constitution, Section 300 of the Procedure Code offers greater protection against a subsequent trial after conviction. A person may be accused of and tried for many offences at once under Section 220(1) of the Code of Criminal Procedure. A second trial may be held under Section 300(2) of the Code in the same circumstances for a different offence that may have been charged at the initial trial under Section 220. (1). If someone commits two separate offences in one transaction, they can be charged separately and prosecuted at the same trial; but, if they are both tried and one of them results in an acquittal or conviction, they can be tried again for the second offence.

According to Section 300(1) of the Code, a person who has been tried by a competent court and found guilty or not guilty of a crime cannot be prosecuted again for that crime as long as the conviction or acquittal is still in effect. It depends on whether a future offence would have resulted in a Section 221(1) charge or a Section 221(2) penalty under the Code. If the later-

sought-after offence should have been charged under subsection (1) of Section 221 or convicted under subsection (b) of Section 221, the second trial would not be permitted (2). By Section 236 of the Code, if a single act or series of acts is of a kind that makes it unclear which of several offences the facts that can be proven will constitute, the accused may be charged with all or any of these offences, and any number of these charges may be tried at once, or he may be charged with one of the said offences.

The term "offence" as used in Section 236 refers to an offence or offences that are so connected that the same facts may fall under the purview of one offence or another, with the differences between them being so slight that it is questionable which offence or offences are actually made out by the facts presented by the prosecution. To be eligible for the benefits of Section 403(1) of the Code or Article 20(2) of the Constitution, an accused must show that he was tried by a court of competent jurisdiction and found guilty or not guilty. If that is established, he will be prohibited from being tried again for the same crime or under the same circumstances for any other crime for which a separate charge could have been brought under Section 236 or for which he could have been found guilty under Section 273.

A person who has been cleared or found guilty of an offence created by their actions may still be charged with and tried for another offence created by those same actions if the court that first tried them lacked the authority to handle the subsequent offence, according to Section 300's subsection (4). To invoke Clause (2) of Article 20 of the Constitution, a citizen must be tried and found guilty of the same crime. It implies "prosecuted" to be "prosecuted and punished." The clause will only take effect if both requirements are met. Law in America is unique. It should be noted that the terms "punishment" and "prosecuted" are ambiguous and can have both a broad and a narrow meaning. However, in Article 20(2), both of these terms are used in reference to an "offence," which must be interpreted in accordance with the General Clauses Act as "an act or omission made punishable by any law for the time being in force." Notwithstanding the fact that a second trial after an acquittal is permitted by Section 26 of the General Clauses Act, it is not prohibited. The General Clauses Act and Article 20(2) of the Constitution both enable double punishment, although they both deem it void.

CHAPTER III: POSITION OF DOUBLE JEOPARDY - CRIMINAL PROCEDURE CODE

Only judicial courts and tribunals can apply the constitutional prohibition of double jeopardy. They do not include departmental or administrative investigations or sanctions.
Hence, English law limits double jeopardy. But, S. 300 of CrPC expands the concept's scope in India.

Criminal procedural code double jeopardy laws go beyond the Constitution. S. 300 of CrPC defines double jeopardy and lists its exceptions. Under CrPC, double jeopardy laws address both acquittals and convictions. So, all who can be acquitted or convicted face double jeopardy.
CrPC 300 covers double jeopardy. This section has six subclauses to explain the concept thoroughly. Below are all subclauses.

S 300(1) of CrPC states that a person cannot be tried again for the same offence if they are acquitted or convicted by a court of competent jurisdiction. Such a person cannot be tried again for the same combination of facts and offence, nor may he/she be tried for different charges under subsection (1) or (2) of 221. This indicates that if a person is convicted of an offence under sub-section (1) of 221, he cannot be convicted under sub-section (2) for the same set of facts in the second trial.

This provision further states that "acquittal" does not include complaint dismissal or accused discharge. The competent court should hear the first trial. Under this approach, the case's facts must be identical. This clause bars a person from a second trial if the facts are the same as the first trial.

Clause (2) states that if a person committed multiple offences but was not tried for all of them in the first trial, he cannot be tried for further offences in the second trial. This means that if a person is acquitted or convicted of a crime and then charged with another one, he cannot be tried again because it is an abuse. A person cannot always face multiple charges. To prevent this abuse, section 300(2) requires state government agreement before launching a fresh prosecution

against any person for every unique offence for which a separate charge would have been made at the prior trial.

This clause allows a second trial for a different offence with state government authorization.

Clause (3) allows the criminal to be retried only if new facts arose from the original offence. First, this clause applies exclusively to convicts, not acquits. The second part of this paragraph states that a person can only be retried if the courts were unaware of some offence- related information.

This means a convict can be retried if new evidence was discovered after the original trial. New facts or consequences must have occurred since the previous trial's conviction or acquittal and not been brought to the court's attention. So, the convict might be retried in the second trial only for the newly observed offence that was not known in the first trial. The second trial would be forbidden if the courts already knew the repercussions and offences of the first trial.

Clause (4) continues clause (3) and breaks the double jeopardy rule. This article provides that if a court is incompetent to try the accused of a consequential offence, the first acquittal or conviction will not preclude the competent court from taking cognizance of it. This means that if the court that tried the first offence was not competent to try the second offence that followed, the first trial will not prohibit the second trial.

Article (5) states that if a person is dismissed under S. 258 of CrPC, the court can discontinue the matter at any time without pronouncing verdict. After principal witness testimony, acquittal, or release, the stoppage might be made. Hence, Article (5) specifies that no S 258 defendant may be prosecuted again for the same offence without the court's consent. This protects against further prosecution misuse in such circumstances.

Clause (6) states that nothing in S. 300 of CrPC affects S 26 of General Clause ACT, 1897.
S 26 allows two or more enactments to be violated. The accused will be charged with either of two enactments if their offence falls under two or more. The accused's two offences' elements

are highlighted. If there are two distinct offences, the prohibition imposed by S 26 cannot be applied.

- After a jury acquits.
- Trial court dismissal.
- On appeal after conviction and after a mistrial.

CHAPTER IV: 'DOUBLE JEOPARDY': ROLE OF INDIAN JUDICIARY

To shed light on how the Indian Judiciary has responded to the protection of Double Jeopardy as stated in the Indian Constitution, some of the important decisions made by our nation's Supreme Court are given below. In Venkataraman v. Union of India[3], an investigation concerning the appellant was conducted by the inquiry commissioner in accordance with the Public Service Enquiry Act, 1960, and as a result, he was fired from his position. Afterwards, he was accused of having violated both the Prevention of Corruption Act and the Indian Criminal Code. The court determined that the investigation conducted by the inquiry commissioner was just an inquiry and not a prosecution for an offence. As a result, neither the idea of double jeopardy nor the protection provided by Article 20 of the Basic Rights applied to the second prosecution (2). It should be noted that Article 20(2) only applies when the same offence is punished. The court determined in Leo Roy v. Superintendent District Jail[4] that the double jeopardy rule will not be applicable if the offences are separate. Hence, it was determined that a second prosecution was not banned because it was not for the same offence when a person was tried and sentenced under the Sea Customs Act before being tried and sentenced under the Indian Criminal Code for criminal conspiracy.

The accused in Roshan Lal & others v. State of Punjab[5] had destroyed the evidence of two distinct offences under sections 330 and 348 of the Indian Criminal Code. As a result, the court

[3] S .A. Venkataraman vs The Union Of India And Another 1954 AIR 375, 1954 SCR 1150

[4] Leo Roy Frey vs The Superintendent, District 1958 AIR 119, 1958 SCR 822

[5] Roshan Lal vs The State Of Punjab And Anr (1996) 112 PLR 660

determined that the defendant was guilty of two offences and subject to two distinct penalties. In A.A.Mulla v. State of Maharashtra[6], the appellants were accused of fabricating a panchnama that claimed they had collected 90 gold biscuits when, in reality, they had recovered 99, in violation of both Sections 409 of the IPC and Section 5 of the 1947 Prevention of Corruption Act. In the same trial, the appellants were found not guilty. The Indian Criminal Code Section 120-B, Sections 135 and 136 of the Customs Act, Section 85 of the Gold (Control) Act, Section 23(1-A) of FERA, and Section 5 of the Import Export (Control) Act, 1947 were all used in the second trial of the appellants for the offence. The appellant contested the legality of the ensuing prosecution on the grounds that it violated the constitutional protections included in Article 20. (2). After carefully examining the case's facts and circumstances as well as the arguments put out by the knowledgeable attorneys for each party, the court declared: "It appears to us that the elements of the offences for which the appellants were accused in the first trial are wholly distinct. The second trial that is the subject of our appeal involves a different factual scenario, and the investigation used to determine whether offences under the Customs Act and the Gold (Control) Act constitute those offences in the second trial is of a different kind. The factual foundation of the first trial and such foundation for the second trial are not indented, in addition to the fact that the components of the offences in the previous and the second trials are different. As a result, contrary to what the appellants claimed, the second trial was not banned by Section 403 CrPC of 1898.

In the case Union of India v. P.D. Yadav[7], the pension of the officer who had been found guilty by a Court-Martial had been lost. Nemo debet bis vexari si constat curiae quod sit pro una et eadem causa, which means no one deserves to be afflicted twice if it appears to the court that it is for one and the same cause, is an expression of this principle, the court held. The doctrine of double jeopardy safeguards against being charged with the same offence twice. The Indian Constitution contains provisions relating to citizens' personal liberties, and other offences like criminal breach of trust, misappropriation, cheating, and defamation may result in criminal prosecution as well as civil lawsuits seeking monetary damages or other remedies, unless a legal prohibition exists. In the proceedings before the General Court Martial, a person is tried for a misconduct offence; however, after the punishment is imposed for a proven misconduct by the

[6] A.A.Mulla v. State of Maharashtra AIR 1997 SC 1441
[7] P.D. Yadav vs Union Of India on 4 March, 1997 1997 IIAD Delhi 901, 66 (1997) DLT 832, 1997 (41) DRJ

General Court Martial that results in cashiering, dismissal, or removal from service, a person is not tried for the same offence of misconduct. Only additional actions done in accordance with Regulation 16(a) are completely different. Hence, it is not possible to apply the concept of double jeopardy to the current cases.

In the case of Jitendra Panchal v. Intelligence Officer, N.C.B[8], on October 17, 2002, drug enforcement agents from the United States and India seized a shipment of hashish weighing 1243 pounds, or 565.2 kilogrammes, in Newark, New Jersey. In the course of the inquiry, it appears that the appellant and one Niranjan Shah were involved in smuggling hashish out of India and into the USA and Europe. The recovered contraband was allegedly brought out of India by the appellant, the aforementioned Niranjan Shah, and one Kishore.

On December 5, 2002, the appellant was detained by Drug Enforcement Agency (DEA) agents in Vienna, Austria, and extradited to the USA. The Narcotics Control Bureau's Deputy Director General, sometimes known as "the NCB," visited the USA shortly after and recorded the appellant's account. This occurred on March 25, 2003. Officers of the NCB then detained Niranjan Shah, Kishore Joshi, and Irfan Gazali in India on April 9, 2003, and charges were brought against them there. In relation to the incident, the NCB filed a complaint on September 5th, 2003, with the learned Special Judge in Mumbai, alleging violations of Sections 29/20/23/27A/24 read with Section 8(c)/12 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") against Niranjan Shah, Kishore Joshi, and two others.

The appellant, who having been extradited to the USA, was tried before the District Court in Michigan, USA34, while the said Niranjan Shah and others were being dealt with before the learned Special Judge in Bombay. The appellant was sentenced to jail on June 27, 2006, for a total term of 54 months after entering a plea of guilty to the conspiracy charge of possessing controlled narcotics with the purpose to distribute them, which is a violation of the USC

[8] Jitendra Panchal vs Intelligence Officer, Ncb & Anr, AIR 2009 SC 1938

Controlled Substances Act35. The appellant was deported to India on April 5, 2007, after completing the sentence, and upon his arrival in New Delhi, he was detained by NCB officers and taken to Mumbai. On April 10, 2007, he appeared before the learned Chief Metropolitan Magistrate and was remanded to judicial custody. At this point, it should be noted that although though the appellant may have been charged with further crimes under Title 21 USC, those charges were dismissed once he admitted guilt to the crime of conspiring to possess a restricted substance. On April 25, 2007, the learned Special Judge in Mumbai rejected the appellant's argument that the proceedings against him in India would amount to double jeopardy by concluding that the charges that had been dropped against the appellant in the proceedings in the USA had not been addressed while passing judgement against him in the District Court of Michigan, USA. On May 17, 2007, the Special Court denied the appellant's bail request after extending his judicial custody.

CASE LAWS

MAQBOOL HUSSAIN V. STATE OF BOMBAY, 1953[9]

Facts

In this instance, the petitioner, who is a citizen of India, flew all the way from Jeddah to the Santa Cruz Airport in Bombay. When he landed in the country, he did not disclose that he was carrying 1250.361 grammes of gold with him, but when he was searched, it was found that he had violated the notification requirements imposed by the Indian government. In accordance with the provisions of Article 167, Clause (8) of the Maritime Customs Act VIII of 1878, the Customs Authorities were authorised to take the gold. However, the owner of the gold could choose to pay a fine of 12,000 rupees instead. This payment had to be paid within four months of the day on which the order was issued. The appellant was provided with a copy of the order, but no one stepped forward to assert their right to the gold. Due to the fact that the same argument was presented with regard to "autrefois convict" or "double jeopardy," the Supreme Court of India issued an order mandating that the appeal be heard by the Bank of the Constitution in conjunction with the Criminal Appeal.

[9] Maqbool Hussain v. State of Bombay AIR 1953 SC 325

Issue of the matter

The question that needs to be answered is whether a plea of double jeopardy can be supported by using the Sea Customs Act of 1878 as well as the order of the Court or the Judicial Tribunal.

The Court's Ruling

Because the previous detention under the Sea Customs Act of 1878 did not constitute a judgement or order of a court or judicial tribunal to support the argument of double jeopardy, the prosecution under the Foreign Regulation Act of 1947 was upheld. This was the reason for the upholding of the prosecution.

KALAWATI V. STATE OF HIMACHAL PRADESH,1953[10]

Facts

In this particular instance, the accused (the plaintiff) killed her husband (the defendant) in an effort to save herself from the abusive treatment. The reality is that after being mistreated by her husband, she was trying to safeguard herself against more brutality. In this case, the accused shot and killed her husband as a response to the mistreatment she received from him. Due to the absence of evidence, she was found not guilty and acquitted. On the other hand, the state ultimately brought a case of appeal against her before the Higher Court.

Issue of the matter

The question that needs to be answered is whether this situation constitutes a violation of the right to appeal that is outlined in Article 20(2) of the Constitution.

The Court's Ruling

The Supreme Court made the decision that the appeal is a continuation of the prior trial rather than a new trial for the same offence, and that the appeal against the acquittal judgement would

[10] Smt. Kalawati And Ors. vs State Of Himachal Pradesh And Anr, II (1988) ACC 192, AIR 1989 HP 5

not be subject to Article 20(2) because there was no penalty in the earlier trial. This was a unanimous decision by the justices on the court. Considering this, it would not be a violation of Article 20(2) of the Constitution for a murder trial to include an appeal against an acquittal order.

THOMAS DANA V. STATE OF PUNJAB, 1959[11]

Facts

The two petitioners in this case were detained by the police while they were attempting to smuggle a large amount of Indian and foreign currency as well as other illegally imported goods out of India. The Collector of Central Excise and Land Customs issued orders to confiscate the seized goods and enforce heavy personal penalties on both petitioners. In this case, the petitioners were attempting to smuggle a large amount of Indian and foreign currency as well as other illegally imported goods. The petitioners were found guilty and given their punishment by the Additional District Magistrate. As a direct consequence of this, an appeal was submitted to the Supreme Court.

The Court's Ruling

The Supreme Court reached the conclusion that the following prerequisites must be satisfied to submit a protection request in accordance with Article 20 (2).

1. That there was an earlier criminal investigation.
2. As a direct consequence of this, the accused was given a sentence.
3. The fact that the punishment corresponded to the same crime

CONCLUSION

In Venkataraman v. Union of India, the Supreme Court ruled that Art. 20(3) refers to judicial punishment and protects a person from being charged with and punished twice for the same offence. In other words, if someone has been charged with an offence and penalised for it in a previous procedure, they cannot be charged with it again in a later proceeding. Any law that

[11] Thomas Dana vs The State Of Punjab(And Connected 1959 AIR 375, 1959 SCR Supl. (1) 274

mandates such double punishment is unconstitutional. Yet, the Article only grants immunity from actions before a court of law or a judicial panel. So, a government employee who has received a court-ordered punishment for an offence may also face departmental proceedings for that same offence or vice versa. It was decided in O.P. Dahiya v. Union of India that if the defendant was neither found guilty nor exonerated of the charges against him in the initial trial, his retrial would not constitute double jeopardy. It was also decided in State of Rajasthan v. Hat Singh that prosecution and other punishment under two sections of an Act, where the offences under the two Sections are distinct from one another, does not constitute double jeopardy. A person cannot be convicted even for a separate offence under a different legislation if the facts leading to the conviction under both statutes are identical, the Supreme Court stated in a recent decision of Kolla Veera Raghav Rao v. Gorantla Venkateshwara Rao[12]. This ruling has drawn criticism since it significantly departs from the preceding legal interpretation and does not address any aspect of double jeopardy. Every legal system is supported by two pillars. One is equity, and the other is legal certainty. After the offender is prosecuted and punished, he or she must understand that by accepting the punishment, their sin has been expiated and they are no longer subject to additional punishment. If he is found not guilty, he must be certain that he will not face charges in any subsequent procedures. A sentence, whether absolvitor or condemnatory, is an absolute ban to any further proceedings for the same offence as well as any additional crimes involving the same factual species, whether committed on public or private property. Every legal system has a double jeopardy clause because it is wrong to punish someone twice for the same crime. The doctrine of double jeopardy is an option available to the accused in order to prevent him from being penalised twice for the same offence. Various cases have various circumstantial circumstances. Because of this, the prohibition against double jeopardy cannot be read uniformly in all circumstances. Judges always look to ensure that the innocent are not punished when interpreting the law. Since man has known law, the concept of double jeopardy has served as an honest attempt to safeguard those who are not guilty. As a result, it can be regarded as a reasonable and uplifting doctrine founded on equity, justice, and morality.

[12] Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao and Anr, (2011) 2 SCC 703

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