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# DOCTRINE OF DOUBLE JEOPARDY



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## EVOLUTION

The doctrine of double jeopardy has been traced back to Roman Law in the principle bis in idem which states an issue once decided must not be raised again. The American Constitution incorporated the doctrine of double jeopardy in the Fifth amendment. The Constitution of India provides protection against the double jeopardy under Art.20(2). The autrefois convict or double jeopardy has been enshrined as the fundamental right in the Indian Constitution. It has its roots in the well-established maxim of the English Common law, Nemo debet bis vexari which means the man must not be punished twice for the same offence.

## DOCTRINE OF DOUBLE JEOPARDY

Article 20(2) of the Constitution of India says that no person shall be prosecuted and punished for the same offence more than once as it follows the principle no person shall be punished twice for the same offence. The Indian Constitution, the autrefois convict is incorporated and not autrefois acquit. If the person is prosecuted for the offence and if he is again prosecuted for the same offence, he can take the complete defence of his former acquittal or conviction. Under Art.20(2) of the Constitution provides protection against the double jeopardy when the accused not only prosecuted but also punished and is prosecuted again for the same offence previously convicted. But if the person is acquitted on the result of prosecution, the appeal can be made on such acquittal and there is no bar for being tried again for the same offence under this Article. Therefore, this doctrine protects the person from convicting twice for the same offence but not different offence on violation of any other law being in force arises on the same facts.



## ESSENTIALS

- The person must be accused of an offence.
- The proceeding should be taken place before a court or judicial tribunal.
- The person must have been prosecuted and punished in the previous proceedings.
- The offence must be the same for which he is prosecuted and punished in the previous proceedings.

## EXCEPTION

- If the punishment is not for the same offence previously sought Art. 20(2) cannot be applied.
- When the person is prosecuted and punished for the second time and subsequent proceedings are mere continuation of the previous proceedings Art.20(2) is not applied.
- Double jeopardy prohibits more than one criminal prosecution on the same facts and same offence. Therefore, a civil suit can be brought even after the acquittal of the defendant.

## UNDER SEC.300 OF CODE OF CRIMINAL PROCEDURE, 1973

This doctrine has already been recognized in the existing law under Sec. 26 of the General Clause Act and Sec. 300 of the Criminal Procedure Code, 1973. Under Sec.300 of Code of Criminal Procedure,1973 if the person is acquitted or convicted for the offence, he cannot be again tried for the same offence and same facts. As it does not bar the trial conducted on the same facts but with a different offence. This is incorporated in Art.20(2) of the Constitution of India.



Section 300 of the Criminal Procedure Code, 1973 may not be in harmony with the Constitution since it contemplates both autrefois acquit and autrefois convict even though a conscious decision had been taken by the Drafters of our Constitution that protection. Of course, CrPC grants much wider protection to the individual and for this reason, has understandably not been assailed on the touchstone of Article 20(2) of the Constitution.

## CONDITIONS

- The trial must be conducted by the competent court.
- The court required to stop the second proceeding and subsequent punishment.
- It should try the same offence on the same facts and the acquittal conviction in force.

## CASE LAWS

### **Case 1.**

***Smt. Kalawati V. State of H.P., AIR 1953 SC 131 at p. 152.***

Held - The use of the word prosecution thus limits the scope of the protection under Art.20(1). If there is no punishment for the offence as a result of prosecution, Art. 20(2) has no application and an appeal against acquittal, if provided by the procedure is in the substance of continuance of the prosecution.

### **Case 2.**

***Maqbool Husain V. State of Bombay, AIR 1953 SC 325.***

Held - The Sea Custom Authority was not a court or judicial tribunal and the adjudging of confiscation under the Sea Customs Act did not constitute a judgment of judicial character necessary to take the plea of the double jeopardy. Hence the prosecution under the Foreign Exchange Regulation is not barred.



### **Case 3.**

***M.P Sharma V. Satish Chandra, AIR 1954 SC 300.***

Held - The person whose name was mentioned as an accused in the first information report by the police and investigation was ordered by the Magistrate, could claim the protection of this guarantee.

### **Case 4.**

***Venkataraman V. Union of India, AIR 1954 SC 375.***

Held - The proceedings taken against the appellant before the Enquiry Commission did not amount to prosecution for an offence. Hence, the second prosecution of the appellant was held not to attract the application of the double jeopardy protection guaranteed by Art.20(2).

### **Case 5.**

***Suba Singal V. Davinder Kaur, AIR 2011 SC 3163.***

Held- The conviction of the accused under Sec.304 of IPC for the death of deceased does not deprive the wife of the deceased to claim compensation. A decree of damages is not a punishment and the rule of double jeopardy has no application.

### **Case 6.**

***State of Mizoram V. Dr. C. Sangnghina, Criminal Appeal No.1332 of 2018.***

Held - 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/supplement charge sheet after obtaining a valid sanction for prosecution.



### **Case 7.**

#### **Shrivardhan Mohta V. Union of India, W.P.No.568 of 2018.**

Held - There is no bar to a trial or conviction of an offence under two different enactments. The bar is only to the punishment of the offender constituted an offence under two enactments, the offender may be prosecuted and punished under either or both enactment but shall not be liable to be punished twice for the same offence.

### **Case 8.**

#### **State of Haryana V. Balwant Singh, 2003 SUPREME 2 609.**

Held - Article 20(2) provides that 'No one shall be prosecuted and punished for the same offence more than once.' Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law. Thus, punishing a person under Section 71 of the Army Act and making order under Regulation 16(a) are entirely different. Therefore, the doctrine of double jeopardy cannot be applied.

### **Case 9.**

#### **Union of India V. Purushottam, 2015 SCC 3 779.**

Held - In the first place there is no complete ban on a second court-martial, provided it is within the prescribed period of limitation, etc. Secondly, the decision of the court-martial fails to find confirmation, the effect is that it cannot be considered that a court martial has, in fact, been concluded and further, in our opinion, so as to debar a fresh one. The double jeopardy principle contained in Section 121 has only premised the prohibition of the second trial in case the first one leads to punishment/conviction.



## Case 10.

### **Shivala Bhikhamsar V. Bablir Kumar Jatti And Ors., CRIMINAL APPEAL NO.394 OF 2017.**

Held - There was conspiracy hatched which was continuing one and has resulted in various offences. It was joined from time to time by different accused persons, so whenever an offence is committed in continuation of the conspiracy, it would be punishable separately for different periods as envisaged in section 212(2), obviously, there have to be separate trials. Thus it cannot be said to be a case of double jeopardy at all. It cannot be said that for the same offence the accused persons are being tried again.

#### **DISCLAIMER**

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