RETHINKING DOUBLE JEOPARDY: EXPLORING THE LEGAL AND ETHICAL BOUNDARIES OF RETRIALS

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ABSTRACT

This paper analyzes the principle of double jeopardy, its historical development, and its application in respective jurisdictions today. The principle of "Nemo Debet Bis Vexari", under the English Common Law strives to protect justice, finality, and confidence among citizens in the legal framework by protecting people from being convicted or facing conviction twice for the same act of crime. It looks into the development of the doctrine, exploring its progression from Roman and canon laws before moving to the consideration of its insertion into the contemporary constitutional documents including the Fifth Amendment of the United States of America's constitution as well as ARTICLE 20(2) of the Indian constitution. Indian CrPC section 300 is discussed with references to the exceptions that permit a retrial in certain scenarios, such as outcomes not anticipated or occurred due to procedural irregularities during the previous trials. The article undertakes an assessment of the main ethical and legal issues related to the retrials and puts more emphasis on the provision of the state's obligation to protect citizens against over-prosecution and uphold justice. It delves into issues of prosecutorial discretion, global initiatives and landmark cases such as Kalawati v. High Court of Himanchal Pradesh & Maqbool Hussain v. State of Bombay. It enhances sturdy judicial safeguards, ensuring that the retrials are based on real provisions of statutes rather than arbitrary or biased motives.

INTRODUCTION

The basis of the double jeopardy rule is in the principle established by the English Common Law and known as "Nemo Debet Vis Vexari," which translates to "a man must not be put in peril twice for the same offence". Getting to the definitions of double jeopardy, there are numerous attached to it. This simply means that under no circumstance should a person be

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prosecuted twice for the same offense as this is the primary reason for establishing the rule. Such a law principle that defines the nature of justice, which Courts enforce, is the rule of double jeopardy which ensures that the justice administered by the court is actually "just" in nature, preserves lawful principles and preserves legal norms and values that must be intrinsic to man. It protects the general population from the government from unfairly mistreating its own people. Due to the clause of double jeopardy prosecutors are barred from 're-aggravating' acquittals or getting additional convictions than what the statute has allowed. Judges are subjected to it and as such, cannot transform a decision after it has been made or come up with an additional harsh sanction. Double jeopardy is a simple legal principle that serves the interest of the virtue of judicial systems, promotes justice, and protects individual's rights. In addition, it ensures that decrees made in a trial are final and provides an opportunity for justice, public trust and ethical practice in the jurisdiction of the criminal courtroom. This is useful in trying to find a way to balance between the protection of the offender's basic freedoms that are accorded by the Constitution and the call for justice. As provided under the BNSS 2023, the Double Jeopardy mainly derives from the provision of Article 20(2) of the Indian Constitution as well as Section 300 of the CrPC 1973. The INDIA BNSS 2023 supersedes the IPC section 498A and maintains the essential consideration while integrating with its goals.

HISTORICAL BACKGROUND

The history of the statutory concept of double jeopardy, which forbids the prosecution of the same individual twice for the same offense, is demonstrative of this evolution. It is in Roman law that the doctrine of double jeopardy can be traced. By the theory of Digest of Justinian, it is unlawful to be charged for the same offense when one has been acquitted already. Security against retrial was skewed, however, because of the procedural procedures prevailing in the period under consideration, involving less official involvement and private prosecution. The early Christian church adopted the concept and with the help of scriptural readings infused it into the Canon Law and advocated against repeated punishment. While its application in civilian laws remained limited the concept also applied to ecclesiastical courts.

The principle that stresses fairness in prosecution developed within the legal system of England, but was not a part of the Charter of Liberties or acknowledged constitutional documents such as the Magna Carta. To be protected against multiple trials is crucial because English criminal law throughout the whole medieval period was characterized by severe punishments including mutilations and deaths. William Blackstone and Sir Edward Coke in

their works published in the 17th and 18th centuries disseminated the concept. These analysts defined autrefois acquit (prior acquittal) as a defense against governmental tyranny and the idea of autrefois convict(Previous conviction) as being related to double jeopardy. However, it is important to remember that its realistic interpretation was repeatedly hindered by apparatus protocols. Several of these colonial legal customs, specifically in Massachusetts, played roles in the assimilation of the doctrine in American legislation. Used by ancient colonial charters and conventions the theory was applied to a range of offenses, increasingly extending beyond the traditional protections against double jeopardy of English law. Recognition of a double sentence for the same offence was categorically prohibited in the Massachusetts Body of Liberties, 1641 which served to lay the paradigm for the inclusion into American constitutional law. Double jeopardy became a fundamental right protected by the constitution of the United States by the Fifth Amendment of 1791 which stipulates that no person shall "be subjected for the same offence to be twice put in jeopardy of life or limb." Double jeopardy was presented as a cornerstone for the protection of the individual from governmental tyranny in the United States of America and concluded several decades of legal improvements. Double jeopardy, a notion in the early legal systems evolved from being a concept that was interpreted much more freely in ancient and medieval laws to being codified as a constitutional provision whereby asserting how significant it is to continue upholding it as a principle that keeps liberty and justice alive today[1].

DOUBLE JEOPARDY IN INDIAN CONSTITUTIONAL PROVISIONS

Under Article 20(2), "No one shall be prosecuted and punished for the same offense more than once". It supports autrefois convict, according to which one may not recommence to stand trial and be punished for a crime for which one was previously adjudged guilty. The Code of Criminal Procedure (CrPC), 1973, section 300 is formulated in part in consonance with the double jeopardy clause for aforementioned principle which clearly avers that a person can't be tried and charged for a particular criminal act and put in the dock again in similar circumstances if he or she was once acquitted of the crime.

Section 300(1) of CrPC states that if a person was previously accused of any offence punishable with imprisonment in a court of proper jurisdiction and that decision is upheld, they cannot be tried for the same offence for a second time; if the trial results in a determination that he is guilty, or if he has been once acquitted after trial. Section 300(2) CrPC states that a person

[1] George Conner Thomas, *Double Jeopardy: The History, the Law* (NYU Press 1998).

acquitted or convicted of an offence may be tried for another offence arising from the same facts but the offence may have previously been charged under Section 220(1). The retrial requires the State Government permit to act as an assurance that many legal violations associated with the same incident are adequately addressed without violating procedural rights. As per Section 300(3) CrPC, if the consequence of the original judgment were unforeseen or had not happened at the time of committing one offence, a person convicted of one crime may be tried for a graver offence at a subsequent date in connection with the same act. It earns the assurance that justice is carried out every time when more serious crimes in a different situation or outcome are discovered. If the court trying such cases under section 300(4) CrPC[2] is not capable of trying this following offense then the person who has been found not guilty or acquitted of an offense can be tried again for the same offense. In addition, Section 300(5) CrPC makes it clear that if a person is acquitted under Section 258 he cannot be re-tried for the offence unless empowered to do so by the court that discharged him or a superior court. For ensuring equity and transparency in the legal system this clause prevents exhaustion of rights by providing against arbitrary retrials while permitting exceptional ones that will be under the supervision of the courts.

Under Section 26 of the General Clauses Act of 1897, a person violating multiple laws may be under trial for one but they cannot be penalized under more than one law for the same offence. These subsections when taken as a whole provide an elaborate framework that guarantees fair operations of criminal briefs and justice while preventing people from repetitive trials and tribulations and balancing the needs of justice and legal defenses.

LEGAL EXCEPTIONS TO DOUBLE JEOPARDY

Out of all the laws systems in the world, The Principle of Double Jeopardy protects people from further trials and punishments for the same offense. However, there are numerous cases when retrial is permitted for some cases in order to provide an opportunity to fulfil justice, and at the same time, it protects against abusing practices being achieved simultaneously.

Mistrials are one exception that may arise in trials that cannot reach a verdict resulting from such things as, a hung jury is inability to decide on a verdict by the jury, technical issues that include wrong juror instructions or inadequate handling of evidence, juror influence or a

[2] Vanshika Kapoor, 'Section 300 CrPC' (*iPleaders*, 12 January 2024) <https://blog.ipleaders.in/section-300-crpc/> accessed 9 December 2024.

judge's disability. If a mistrial was considered as having occurred due to "manifest necessity", which means it was necessitated in the interest of justice; then a retrial after a mistrial is possible. However, mistrials declared as a result of malicious prosecution misconduct intended to incite a retrial are forbidden under the double jeopardy clause as reiterated in cases such as Oregon v. Kennedy (1982).

Appeals and overturned convictions reflect yet another spectacular anomaly; wherein retrial becomes admissible in case the first verdict is legally null. A retrial may be granted to a defendant who appeals a conviction on grounds such as erroneous jury instructions, procedural malpractice or misconceived legal provisions. Since the appeal casts aspersions about the original verdict, the defendant cannot be said to have been either, guilty or acquitted, permitting for a retrial under different circumstances. In a bid to preserve the tenets of justice appellate courts send cases back to the trial courts whenever they quash convictions due to judicial errors. Since a verdict has not been rendered, the prosecution can also appeal pre-trial rulings, for instance, pre-trial dismissal, without violating the protection against double jeopardy.

A third type of exemption comes up in the event that one side produces fresh evidence after a verdict has been given. When new information is obtained the third exemption comes into play. This exemption is particularly crucial when justice requires cases to be reviewed, due to recently discovered pivotal evidence, especially in serious offenses like murder. New forensic advancements such as DNA testing can reveal information that may condemn or exonerate an individual. The case of R v Dobson (18 May 2011)[3] is a classic example that concerns an application to quash the decision of the jury and reach a guilty verdict on convict Gary Dobson for the racially motivated murder of Stephen Lawrence in 1993. The case concerns new scientific evidence under Section 76 of the Criminal Justice Act 2003 applied to the retrial of the case. The forms of evidence comprised fibres and blood samples connecting Dobson to the crime scene, which were not discovered earlier because the forensic techniques were not developed. Nevertheless, the defense argued that there was contamination and the court accepted new evidence as being real, believable and having high probative value. This judgment reflects on the challenges that are enacted by pursuing progressive science into past occurrences. A retrial related to the acquitted accused is admissible in the UK under Section 5 of the Criminal Justice Act 2003, provided that "new and compelling evidence" is avowed. In

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[3] 'R v Dobson | [2011] EWCA Crim 1255 | England and Wales Court of Appeal (Criminal Division) | Judgment | Law | CaseMine' <https://www.casemine.com/judgement/uk/5a8ff7a160d03e7f57eb083d> accessed 15 December 2024.

addition, a retrial is possible if the jury is deceived or the initial acquittal was achieved through fraudulent means.

A balance between social justice inhibitors and the preservation of an accused person's rights is best demonstrated by the following exceptions. They make sure that ordering new trials serves the concept of justice without compromising the protection standards of double jeopardy through rigorous analysis of judicial constitutionalism and providing security from exploitation.

ROLE OF PROSECUTORIAL DISCRETION

The very essence of the double jeopardy concept is largely dependent on the prosecutors, which determines the protection's application and circumvention. The decisions to file charges, the severity of the charges to be filed, and even the jurisdiction to use are vested with prosecutors. As illustrated by cases of mistrials, it is evident that the manner in which prosecutors conduct trials may possess an erroneous influence on the outcome. As stated in Oregon v. Kennedy (1982) one cannot appeal or have a retrial in situations where a mistrial is declared as a result of prosecutorial misconduct. However, mistrials brought on due to accidental errors are generally allowed a new trial. When convictions can be quashed on appeal, prosecutors need to choose whether to seek retrials by balancing between the interest of the public and the justice measures. Thus for double jeopardy's prosauive mechanism to be protected, prosecutorial discretion needs to be applied cautiously. The public's confidence might be disrupted, and defendant's rights can be abused due to overjealous prosecutions, too many retrials or deliberate mistrials.

In a global context, prosecutorial discretion interacts with a diversity of legal systems. While many prosecutions across many nations are restricted under the EU's ne bis in idem principle, retrials are permitted to international tribunals such as the ICC under specific conditions including severe procedural deficiencies or new evidence. As the judiciary pays close attention and accords substantial scrutiny to ensure prosecution does not abuse such power or deliberately disrespect the rule of law, prosecutorial discretion is left to search for a fine balance between doing justice and observing fairness and finality in criminal trials.

ETHICAL CONSIDERATIONS SURROUNDING RETRIALS

Ethical questions concerning retrials have to be weighed against the duty of the state to deliver justice for the populace as well as the abuse and over-prosecutorial responsibility on one hand,

and the fairness to the accused, on the other hand. Due to the social, psychological, and economic repercussions of multiple trials, a defendant must be treated fairly. In court, defendants have the right to finality – meaning that once the defendant has been declared not guilty or acquitted then they may proceed without worrying about ongoing legal lawsuits. This idea is more apparent in dispelling intimidation and the notion that the accused is being treated unfairly by the court. Moreover, one must bear in mind the gross imbalance of power between the states, with its enormous resources, and a single defendant underscores the necessity of adequate safeguards against pressure during retrials. Retrials are generally considered by the state in specific circumstances, when the evidence becomes accessible or when the initial trial is tainted by procedural irregularities. In horrific offenses, the community's yearning for justice may take precedence over the defendant's long-sought right to finality. It's the moral duty of the state to prevent unnecessary or repetitive prosecutions and to ensure that retrials are sought when the evidence is sufficient and the interest of justice is served. In order to ensure that retrials are solely sought when supported by strong arguments and carried out in a way that is equitable and compliant with the law, courts are an effective way. Preventing abuse can be aided by measures such as seeking court consent for retrials based on mistrials or fresh proof.

Preserving finality serves the notice and protection of the defendants from state overreach by preventing repeated trials. Nonetheless, declining retrials when there is new accurate data, people can be deprived of justice and unpunished crimes can go unsolved, and citizens will eventually lose faith in the law, as well. That retrials are capable of prolonging court cases and thereby denying the principle of finality is not in doubt, but the ethical importance lies in correcting injustices. Retrials give an issue of ethical concern based on the call of the state to do justice, the call to defend a defender from abuse and also the call for abuse of prosecutorial power.

LANDMARK JUDGEMENTS

KALAWATI VS STATE OF HIMACHAL PRADESH 1953[4]

The case relates to the 1951 murder of landlord Kanwar Bikram Singh. According to the prosecution, Kalawati and Ranjit plotted because of her husband's brutality and their extramarital affair. While Kalawati was initially found not guilty of aiding and abetting but convicted guilty of hiding evidence, Ranjit was convicted guilty of murder and was sentenced to life imprisonment. Kalawati's conviction for abetment—later changed to three years for

[4] Kalawati v. State of Himachal Pradesh, 1987 SCC OnLine HP 15

deleting evidence—was the result of appeals. Retracted confessions, eyewitness accounts, and recovered objects were significant bits of evidence. The Supreme Court overturned Kalawati's conviction and maintained Ranjit's life sentence. The problem that arose when trying to answer the aforesaid issue is whether this case infringe the right to appeal under Article 20(2) of the Constitution.

The Sessions Judge sentenced Kalawati to five years of rigorous imprisonment for having suppressed evidence under Section 201 and Ranjit Singh was sentenced to death for murder under Section 302. Following an appeal, the Judicial Commissioner affirmed Ranjit Singh's death penalty and found Kalawati guilty of abetment to murder (Sections 302/114) and sentenced her to life imprisonment. The Supreme Court reduced Kalawati's conviction to Section 201 IPC with three years of hard jail and remitted Ranjit Singh's death sentence to a life sentence in prison.

MAQBOOL HUSSAIN VS STATE OF BOMBAY[5]

Maqbool Hussain brought unreported gold to Santa Cruz Airport from Jeddah, which was seized by the Customs Authorities in accordance with Section 167(8) of the Sea Customs Act, 1878. Customs subsequently issued a notice of confiscation but provided an opportunity to reclaim the gold in exchange for a ₹12,000 fine. Later, for importing gold without a government notification, Maqbool Hussain was charged under Section 8 of the Foreign Exchange Regulation Act, 1947. He disputed the prosecution, claiming that since he was already "punished" by Customs with the confiscation order, it constituted double jeopardy. The question that arose was whether a double jeopardy plea could be supported by the Sea Customs Act of 1878 and an order passed by a court or judicial tribunal.

As to Article 20(2), the Supreme Court stated that procedures with customs officials are not regarded as prosecution or punishment as they are administrative rather than legal proceedings. The decision to dismiss the appeal has also underscored one important realization, that double jeopardy is only applicable in situations when the prosecution and punishment are carried out in a courtroom. The extent of Article 20(2) was made clear by this ruling, which established that administrative procedures cannot bar further criminal prosecutions for the same offense.

[5] Maqbool Hussain v. State of Bombay, (1953) 1 SCC 736

CONCLUSION

Emblematic in Article 20(2) of the constitution of India, the principle of double jeopardy arms the people immunity from being tried again and again for the same crime owing to threats and misuse of legal authority. Thus, courts must give very much attention to determining the propriety of retrial motions to meet these demands while avoiding retrial as being motivated by prejudice and procedure. Thus, when the norms established by the law are enforced openly and coherently, for instance by showing that the new charges are separate from others or by saying that earlier procedures were seriously flawed, the public's confidence in the system also rises. The accused requires some serious protection from judicial processes, for instance, clear-cut rights to a lawyer, fair trial and mechanisms against vindictive attempts towards a repeat trial. Equity and accountability in all cases can be ensured by the legal system by meeting accurate legal and community justice needs having regard to individual liberties without infringing civil liberties. In circumstances attending retrial, mitigation of justice whilst safeguarding the rights of the accused is a delicate process, which calls for a vigilant and fair legal system.