



## DOUBLE JEOPARDY: A CASE STUDY

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### ABSTRACT

*The Doctrine of Double Jeopardy has derived its roots from various civilizations, such as the Mesopotamian and the laws of many countries, like Greece and Rome. With inspiration taken from the Fifth Amendment of the U.S. law, it is enshrined in Article 20(2) of the Indian Constitution. Double jeopardy is explained with the help of various judgements that show its exceptions and implications. It further raises the question of whether it can be utilized in both criminal and civil cases, and the concepts of Autrefois Convict and Autrefois Acquit, which are key elements for double jeopardy. In my research, I have explained the elements, exceptions, and the future of double jeopardy in India, along with its boons and banes to the Indian Society.*

**Keywords:** Double Jeopardy, Autrefois Convict, Autrefois Acquit.

### THE CONCEPT OF DOUBLE JEOPARDY

In the Constitution of India, the principle of Double Jeopardy is addressed in Article 20(2). This principle means that a person cannot be tried or sentenced twice for the same offence. The Fifth Amendment to the United States Constitution was the source of the doctrine. Jeopardy is the danger arising from being on trial for a criminal offence and implies an exposure to a lawful conviction for an offence for which a person has already been acquitted or convicted. The theory of double jeopardy is also highlighted under Article 21<sup>1</sup> of the Indian Constitution, which grants the fundamental right to life and personal liberty. 'Life' refers to the right to live with human dignity and not just physical breathing. Prosecuting a person twice for the same offence for which he has previously either been acquitted or convicted affects this right.

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<sup>1</sup> Criminal Procedure Code, 1973-S. 300

## HISTORY

The idea of Double Jeopardy, which is referenced in one court and seems to be a part of the English common law, has no particular genesis, leading to the conclusion that it has always existed<sup>2</sup>. The Greeks and Romans were aware of the notion of double jeopardy, and Justinian's Digest eventually recognised it as the rule that the governor should not permit the same individual to be charged with a crime for which he had previously been tried and found guilty. The Magna Carta, signed in 1215, is a foundational document in English law that limited the power of the monarchy and established principles of the rule of law and process to be followed. While it didn't specifically address double jeopardy, its emphasis on limiting the Crown's power and ensuring fair treatment laid the groundwork for later legal developments that would include protections against double jeopardy. The English common law principle "Nemo bis punitur pro eodem delicto," which states "no one should be punished twice for the same offence," is the source of the term "double jeopardy." The concept of double jeopardy was derived from a common source: canon law. Canon law established as early as 847 A.D. that no one, not even God, might face judgment for the same offence more than once. Double Jeopardy existed in India before the creation of the Indian Constitution, as outlined in Section 26(3) of the General Clauses Act, 1897. This section states that if an act or omission constitutes an offence under two or more laws, the offender can be prosecuted and punished under any one of them, but not under both.

## THE PRINCIPLES OF AUTREFOIS CONVICT AND AUTREFOIS ACQUIT

Autrefois Convict is a French principle which prevents multiple prosecutions or convictions following an initial conviction in a previous trial. Autrefois Acquit covers retrial after an earlier acquittal, but the Indian Constitution does not incorporate the principle of Autrefois Acquit in Article 20(2). However, both the autrefois acquit and autrefois convict pleas are recognised by the Code of Criminal Procedure. Section 300 of the amended Criminal Procedure Code, 1973 (Section 403(1) of (the old) CRPC, 1898) states that a person who has previously been tried by a court of competent jurisdiction for an offence and found guilty or not guilty of the offence shall not be subject to a second trial for the same offence or on the

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<sup>2</sup> IJFMR- The Doctrine of Double Jeopardy "A Broader Aspect"

same facts for any other offence for which a different charge from the one against him might be brought.<sup>3</sup>

### **ELEMENTS OF DOUBLE JEOPARDY**

- The individual must be accused of a crime first and foremost. Definitions of the term "offence" can be found in the General Clauses Act of 1897, which violates the law at the time and is done or not done.
- There are judicial proceedings against that person in a court of law.<sup>4</sup>
- The person has been prosecuted and punished in an earlier proceeding before a competent court of jurisdiction.
- The individual should be sued again for the same offence for which he was prosecuted and punished earlier.

### **CAN DOUBLE JEOPARDY BE APPLIED IN BOTH CIVIL AND CRIMINAL CASES?**

A person can be subjected to both criminal and civil liability for the same offence, as double jeopardy only applies to criminal cases and prevents multiple criminal prosecutions. Hence, the defendant cannot defend himself against punishment in a civil court for the same crime committed in a criminal court.

This is seen in the two Landmark judgments of the O.J. Simpson Murder Trial as described below-

**The People of the State of California v. Orenthal James Simpson:** Facts- Often called the trial of the century due to wide publicity and media speculation, the pursuit, arrest, and trial spanning eleven months were one of the most talked about in American history. In 1995, O.J. Simpson, a football player, was acquitted of the murders of his ex-wife, Nicole Brown Simpson, and her friend Ronald Goldman. Despite overwhelming evidence against him, including DNA evidence, Simpson was not found guilty in criminal court as his guilt could not be proven beyond a reasonable doubt.

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<sup>3</sup> Code of Criminal Procedure S. 300

<sup>4</sup> Doctrine of Double Jeopardy [Ashok, Sonage Vivekanand Page 1282](#)

**Civil wrongful death lawsuit, 1997:** After the trial in the murder case, the families of Brown and Goldman filed a civil case against O.J. Simpson on the grounds of wrongful death. This case had a motive of seeking monetary damages instead of jail time. Simpson was found liable for the wrongful death of Ron Goldman and battery against both Goldman and Brown, resulting in the order of payment of \$33.5 million. Later in 2001, in *Rufo v. Simpson*<sup>5</sup>, the Jury found that the defendant, Simpson, committed these homicides wilfully and wrongfully, with oppression and malice. The jury awarded the plaintiffs compensatory damages and punitive damages. Here, the difference between a criminal and a civil trial can be seen. In a criminal trial, guilt must be proven beyond a reasonable doubt, which was not shown. However, in the civil trial, there is a lowering of the standard known as the preponderance of evidence. Civil jurors require only slight evidence that is 51% likely to find liability, whereas near-certainty is required in criminal court. O.J. Simpson could not be tried again in a criminal trial, but was tried in a civil one, which illustrates the fact that double jeopardy is not applicable in civil cases. However, the principle of *res judicata* can be used in civil cases to prevent reappeal for matters already decided by a court having complete jurisdiction.

## EXCEPTIONS

- An individual can be prosecuted for the same case under different laws; thus, double jeopardy does not apply.
- Double jeopardy pertains only to criminal prosecutions.

## LANDMARK CASES

**Maqbool Hussain v. State of Bombay, 1949:** The appellant, an Indian citizen, arrived at Santa Cruz Airport from Jeddah on 6<sup>th</sup> November, 1949<sup>6</sup>. He did not disclose having any gold upon landing, but almost 1.25 kilograms of gold were found when searched. This was in contravention of the Government of India's notification in 1948. The Customs Authority took action under the Sea Customs Act 8 of 1878, Section 167, clause (8), and confiscated the gold. The owner of the gold was fined Rs. 12000, but the gold was never claimed. In 1950, a complaint was filed against the appellant in the Court of the Chief Presidency Magistrate, charging him under Section 8 of the Foreign Exchange Regulation Act, 1947. The appellant contended that he could not be prosecuted and punished again due to Article 20(2) of the

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<sup>5</sup> *Rufo v. Simpson*, 86 Cal. App. 4th 573

<sup>6</sup> *Maqbool Hussain v. State of Bombay*, (1953) 1 SCC 736

Constitution, which states the concept of double jeopardy. However, the Supreme Court dismissed the appeal, stating that although the act was considered to be an offence under both the Foreign Exchange Regulation Act and the Sea Customs Act, there was no judgment, prosecution, or judicial tribunal under the latter, which negated the possibility of double jeopardy taking place.

**Kalawati v. State of Himachal Pradesh, 1953:** Kanwar Bikram Singh, a zamindar, married Kalawati, an appellant in the case, in 1938<sup>7</sup>. The case of prosecution said that he was cruel to his spouse, and in an act to protect her from the mistreatment, Kalawati killed him in 1951 with the help of her illicit lover, the other appellant, Ranjit Singh. Due to insufficient evidence, Kalawati was acquitted in the murder trial but later faced an appeal from the State. The main question was whether this appeal from the State resulted in double jeopardy, as Kalawati was being tried again. The Supreme Court ruled that since she was declared innocent, an appeal against an acquittal would be treated as a continuation of the previous trial and not a new one for the same offence. As a result, this appeal did not contravene Article 20(2).

## DOUBLE JEOPARDY IN DEPARTMENTAL PROCEEDINGS

Departmental proceedings are actions initiated inside the organisation by an employer to address alleged misconduct or breach of rules by an employee<sup>8</sup>. They are governed by rules, regulations, policies, and employment contracts. These proceedings are different from criminal proceedings as they focus on maintaining efficiency, integrity, and a peaceful working environment rather than imposing criminal penalties. Departmental proceedings also rely on the preponderance of probability, which is a standard of proof where the party with the burden of proof needs to show that their version of events is more probable than the opposing side's, without needing to eliminate all possible doubt, unlike criminal trials, which require proof beyond a reasonable doubt.

## LANDMARK CASE

**Union of India v. Purushottam, 2015:** In the landmark case of Union of India and Another v. Purushottam, the Supreme Court of India discussed the relation between actions for punishment by the military and constitutional protection as enshrined in Article 20(2) of the

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<sup>7</sup> Kalawati v. State of H.P., (1953) 1 SCC 86

<sup>8</sup> <https://lawbhoomi.com/landmark-judgements-on-double-jeopardy-in-departmental-proceedings/>

Constitution of India. Havildar Purushottam was a member of the Corps of Military Police, facing charges of extortion and misconduct during duty. He pleaded guilty in a court-martial, leading to a subsequent notice for discharge based on the same allegations. This led to the question of whether double jeopardy would apply in this case. The Supreme Court examined whether the disciplinary action taken against Havildar Purushottam, specifically his discharge from service based on charges identical to those previously addressed in a court-martial, constituted a violation of the double jeopardy principle under Article 20(2). The court stated that an acquittal by a criminal court would not directly impact departmental proceedings for the following reasons.

- The degrees of proof are different and cannot be compared.
- Criminal prosecution is not in the hands of the department concerned, and the judgment given in the criminal trial might be due to poor investigation or wrong evidence.
- An acquittal in criminal prosecution needs to conclude that the accused was innocent and not just that he has not been proved to be guilty beyond a reasonable doubt.

Thus, by emphasizing the distinction between criminal proceedings and departmental actions, the Court concluded that the initiation of discharge proceedings did not infringe upon the double jeopardy clause, thereby upholding the discharge order while allowing for continued departmental actions per the law.<sup>9</sup>

## CONCLUSION

Double jeopardy or *non bis in idem* in Latin is covered in Article 20(2) of the Indian Constitution, and also in Section 300 of the Code of Criminal Procedure, and now Section 337 of Bharatiya Nagarik Suraksha Sanhita (BNSS).<sup>10</sup> In India, what constitutes double jeopardy has a very narrow concept of the same offence. This leads to multiple prosecutions under different acts, such as in the case of *Maqbool Hussain v. State of Bombay* (1953).<sup>11</sup> Victims of such a situation face various problems such as financial constraints, mental and emotional strains, while the State is also under a litigation burden. Since department proceedings and investigations are still permitted, this leads to the wastage of resources in our

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<sup>9</sup> *Union of India v. Purushottam*, (2015) 3 SCC 779

<sup>10</sup> *Bharatiya Nagarik Suraksha Sanhita S. 337*

<sup>11</sup> *Maqbool Hussain v. State of Bombay*, (1953) 1 SCC 736

country. On the other hand, this doctrine shields an individual from harassment and limits the State's ability to pursue repeated prosecutions of the same offence. By the finality of judgements and prohibition of retrial once punished, it guards a person from hardships caused by repeated trials. In conclusion, double jeopardy has a lot of scope for improvement in India, and with increasing reforms, it may also safeguard against simultaneous investigations and proceedings. With increasing technology, India might also consider a 'new evidence' exception allowing retrial after acquittal when compelling evidence emerges.