

## **Double Jeopardy: It's Constitutional Values**

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### **Abstract-**

Double jeopardy is a legal conception that prevents a person from being tried or penalized twice for the same offence. It's a fundamental principle of criminal law, designed to cover individualities from the arbitrary use of state power and to ensure that they aren't subordinated to multiple executions and corrections for the same crime. In India, the principle of double jeopardy is elevated in Article 20(2) of the Constitution, which provides that no person shall be prosecuted and penalized for the same offence more than once. The indigenous value of double jeopardy in India has its roots in the country's history of social rule, which was marked by arbitrary and rough use of state power.

**Keywords-** Double Jeopardy, Prevent, Offence, Criminal law, Arbitrary, Subordinate.

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The British social government frequently used the felonious justice system to suppress dissent and discipline political opponents. The conception of double jeopardy surfaced as a safeguard against the abuse of state power, and was latterly elevated in the Indian Constitution.

The principle of double jeopardy is of great significance in the Indian legal system, as it upholds the abecedarian rights of citizens and prevents the abuse of state power. It ensures that individualities aren't subjected to multiple executions and corrections for the same crime, which would violate their right to a fair trial and due process of law.

The principle also promotes finality in legal proceedings, as it prevents the state from retrying an existent for the same offence after they've been acquitted or condemned. still, there are some exceptions to the principle of double jeopardy in India.

The first exception is when a person has been acquitted of an offence on a technicality, similar as a procedural error or a disfigurement in the charge sheet. In similar cases, the state may retry the person for the same offence, as the vindication wasn't grounded on the merits of the case.

The alternate exception is when a person has been condemned of a lower offence, and the state wishes to try them for a more serious offence arising out of the same facts. In similar cases, the principle of double jeopardy doesn't apply, as the alternate offence is considered a separate and distinct offence. In recent times, there have been some difficulties girding the operation of the principle of double jeopardy in India.

### **History--**

The origins of double jeopardy can be traced back to ancient times, when numerous legal systems had rules against retrying a person for the same offense. For example, in ancient Rome, the law of "bis de eadem re ne sit actio" (no action can be taken doubly for the same thing) averted individualities from being tried doubly for the same crime. also, under Jewish law, the principle of "res judicata" (a matter formerly judged) banned the retrial of a person who had formerly been acquitted or condemned of a crime.

In the English common law system, the principle of double jeopardy was first established in the 12th century. Under the rule of "autrefois acquit" (formerly acquitted), a person who had been acquitted of a crime couldn't be retried for the same offense. Still, this rule didn't apply if the person had been condemned and sentenced, as they could be retried for the same offense if new evidence surfaced.

### **Parliamentary Debate on Double Jeopardy-**

Debating the issue of double jeopardy is an important content in the legal system.. The content of double jeopardy has been a source of controversy and debate, with proponents arguing that it's an essential protection against government abuse, while opponents argue that it can allow guilty parties to go unpunished. Those in favor of double jeopardy argue that it's a fundamental protection against government overreach. They believe that the government shouldn't have the power to continuously make individuals for the same crime, as this would lead to an illegal and abusive legal system. sympathizers of double jeopardy also argue that the principle encourages finality in the legal system, meaning that once an existent has been acquitted of a crime, they cannot be subject to farther legal proceedings for the same offense.

On the other hand, opponents of double jeopardy argue that it can allow guilty parties to go unpunished. For example, if new evidence emerges after a trial, it may not be possible to try the accused again for the same crime, indeed if the evidence proves their guilt. They argue that this undermines the capability of the legal system to bring justice to victims and may lead to a sense of immunity among culprits. Another argument against double jeopardy is that it may not apply in cases where a mistrial occurs. A mistrial is when a trial is terminated before a final verdict is reached, due to a procedural error or other circumstances. In similar cases, some argue that the existent should be subject to a new trial to ensure that justice is served. In conclusion, the issue of double jeopardy is complex and raises important questions about the part of the legal system and the rights of individuals. While some argue that double jeopardy is a necessary protection against government overreach, others argue that it can allow shamefaced parties to go unpunished. Eventually, it's over to lawmakers and legal professionals to determine the applicable balance between guarding individuals and ensuring that justice is served.

### **Constitutional Values and CrPC in India-**

The Indian Constitution is the supreme law of the land and is the foundation of the Indian legal system. It's a living document that reflects the values and aspirations of the Indian people. The Constitution provides for a popular and temporal form of government and lays down the abecedarian rights and duties of Indian citizens. It also establishes the powers and functions of the three branches of government the council, the superintendent, and the bar.

The Indian Constitution is grounded on the principles of justice, liberty, equality, and fraternity. These principles are elevated in the Preamble to the Constitution, which reads " We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation." The doctrine of double jeopardy in the context of the Indian legal system is elevated in Article 20(2) of the Indian Constitution and Section 300 of the Code of Criminal Procedure (CrPC). It basically means that no person can be fulfilled or penalized for the same offense more than formerly. According to Section 300 of the CrPC, a person who has been tried and convicted or acquitted of an offense cannot be tried again for the same offense.

### **Still, there are certain exceptions to this rule, similar as-**

- he or she can be retried if new and conclusive substantiation is set up, If a person has been acquitted of an offense.
- he or she can be retried for the higher offense, if a person has been condemned of a lower offense and a higher offense is latterly discovered.
- he or she can be tried again for the same offense in a higher court of appeal, If a person has been condemned by a court of competent jurisdiction.

### **Applicability-**

It's important to note that the doctrine of double jeopardy applies only to criminal cases and not to civil cases. also, it only protects against multiple executions for the same offense, and doesn't help a person from being penalized for multiple offenses arising out of the same incident. The doctrine of double jeopardy isn't an absolute protection, and there are certain grounds on which it may not apply. One of the most important grounds for the applicability of the doctrine of double jeopardy is the conception of " same offense." Under this principle, a defendant cannot be tried or penalized doubly for the same offense, but what constitutes the same offense can be a complex and queried issue.

Generally, courts will look to the elements of the offense charged to determine whether the alternate execution is for the same offense as the first. However, also the alternate execution is barred by the doctrine of double jeopardy, If the elements are the same.

Another important ground for the applicability of the doctrine of double jeopardy is the conception of " separate rulers." This principle allows different rulers, similar as the civil government and a state government, to make a defendant for the same offense without violating the double jeopardy clause. This means that a defendant who's acquitted or condemned in state court can still be prosecuted in civil court, or vice versa, for the same offense.

Also, there are some situations where a defendant may waive their protection under the doctrine of double jeopardy. For example, if a defendant enters into a plea agreement with the execution, they may agree to waive their right to be defended by the double jeopardy clause. also, a defendant who successfully appeals a conviction may be retried for the same offense if the appellate court finds that the error was harmless or if the defendant warrants to a new trial.

In some cases, the doctrine of double jeopardy may also be subject to exceptions for mistrials. However, either because of a procedural error or because the jury is unfit to reach a verdict, the defendant may be retried without violating the double jeopardy clause, if a trial ends in a mistrial. still, the execution must show that the mistrial was necessary and not a deliberate attempt to secure a alternate occasion to convict the defendant.

Eventually, the doctrine of double jeopardy may not apply in certain situations where the defendant's conduct constitutes multiple offenses. For illustration, a defendant who commits both murder and robbery may be prosecuted for both offenses, indeed if they arise from the same underlying conduct.

#### **Judicial views on Double Jeopardy-**

In the case of **Mohammad Ajmal Kasab vs State of Maharashtra**, the sole surviving gunman in the 2008 Mumbai attacks. Kasab was originally charged with multiple offences, including waging war against the state, murder, and conspiracy. He was condemned and sentenced to death on all counts. still, the Supreme Court of India set aside the charge of waging war against the state, ruling that it wasn't applicable to Kasab as he was a foreign public.

The state also sought to retry Kasab on the charge of waging war against the state, arguing that it was a separate and distinct offence. still, the Bombay High Court ruled that the retrial would violate the principle of double jeopardy, as Kasab had formerly been condemned and doomed to death for the same offence.

Another controversy arose in the case of the two Italian marines<sup>[4]</sup>, who were indicted of killing two Indian fishers off the seacoast of Kerala in 2012. The marines were originally charged with murder, but the charges were latterly downgraded to a lower offence of causing death by negligence. The marines were allowed to return to Italy on the condition that they would return to India to face trial. still, the Italian government latterly informed the Indian government that the marines would not be returning to India.

The Indian government sought to initiate fresh proceedings against the marines on the original charge of murder, arguing that the principle of double jeopardy didn't apply as the marines hadn't been tried or condemned for the offence. still, the Supreme Court of India ruled that the principle of double jeopardy did apply, and that the state couldn't initiate fresh proceedings against the marines on the charge of murder.

#### **Conclusion-**

The protection against double jeopardy in India is a fundamental right and a foundation of the Indian legal system. still, there are certain exceptions to this principle. For example, if a person is acquitted of a felonious offense in a lower court, the state can appeal to a higher court to capsize the acquittal and order a retrial. Also, if new evidence emerges after a person has been acquitted, they can be tried again for the same offense. still, in similar cases, the execution must give strong evidence to prove that the new evidence wasn't available at the time of the first trial.

In conclusion, while the principle of double jeopardy is defended in India, there are exceptions to this principle, and the state can seek to retry a person under certain circumstances. Overall, the Indian legal system seeks to balance the rights of the indicted with the requirements of justice and the public interest.

#### **End-Notes:-**

- [1]. Confirmation Case No. 2 of 2010 under Sec 366 of the Code of Criminal Procedure (CrPC). AIR 2012 & SC356
- [2]. WP(C).No. 4542 of 2012 (P)