



# Double Jeopardy in India: An Analytical Study

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## Abstract

Double jeopardy is a procedural defense in jurisprudence that prevents an accused person from being tried again on the same (or similar) charges following an acquittal or conviction and, in rare instances, prosecutorial and/or judge misconduct in the same jurisdiction. This defense is primarily used in common law jurisdictions<sup>1</sup>.

**Key Words:** Double Jeopardy, Res-judicata, Jurisprudence, Judiciary

## 1.1 Introduction-Meaning of Double Jeopardy

A legal defense known as the doctrine of double jeopardy prevents an accused or defendant from being tried again for the same charges and facts after a legal acquittal or conviction. The doctrine of double jeopardy can be found in the Indian Constitution, specifically Article 20(2), which discusses and defines the doctrine. The Indian Constitution's drafters included it in Part III as one of our fundamental rights. The double jeopardy principle, which ensures that the system's values are upheld, is one of the principles on which the criminal justice system is based.<sup>2</sup>

1. *Double Jeopardy: Addressing Gender Equity*—Edited By harilyn Rousso & Michael L. Wehmeyer
2. <https://blog.iplayers.in/the-doctrine-of-double-jeopardy/>

convicted"). The broader principle of non bis in idem, which translates to "not twice against the same," appears to be the source of these doctrines in ancient Roman law.

## 1.2 The History of the Double Jeopardy Theorem

The English common law principle "Nemo bis punitur pro eodem delicto," which states "no one should be punished twice for the same offense," is the source of the term "double jeopardy." The common law principle as "Nemo debet bis vexari," which means "a man must not be put in peril twice for the same offense." It is the source of the term "double jeopardy." Simply put, it refers to "punishment given more than once for the same offense" or "penalty twice."<sup>3</sup>

The Greeks and Romans were aware of the double jeopardy theory. The doctrine of double jeopardy is derived from Canon law, which is shared by the Continental and English systems. Canon law stated that no one, not even God, could be tried again for the same offense in 847 A.D. Through the Justinian Code, this idea has been incorporated into Roman law.<sup>4</sup>

Several nations, including India, Canada, the United States, and Mexico, recognized Double Jeopardy as a constitutionally protected right. Section 403 (1) of the previous Code of Criminal Procedure, which has since been replaced by Section 300 Amendment, and Section 26 of the General Clauses Act of 1897

3. *Criminal Justice By K.L.Vibhute—Eastern Book Company*

4. <https://blog.ipleaders.in/the-doctrine-of-double-jeopardy/>

were the two forms of double jeopardy that existed in India. This idea was in place before the Indian Constitution was made.

A person who has been tried for a crime in England or the United States cannot be tried again for the same crime, regardless of whether the first trial found him not guilty. However, under Article 20(2), a person who has been found not guilty can be tried again in India and punished. He or she could use Article 20(2) as a defense if they were tried and found guilty of the same crime. The Constitution's Article 20(2) safeguards against double jeopardy. It says that no one can be arrested and punished for the same thing more than once<sup>5</sup>.

### **1.3 Double jeopardy in India**

"No person shall be prosecuted and punished for the same offence more than once," says Article 20(2) of the Indian Constitution, which guarantees a partial protection against double jeopardy. The idea of the *autrefois* convict, which states that a person who has been convicted of a crime cannot be tried or punished again, is enshrined in this provision. However, it does not apply to "otherwise acquit," so if a person is found not guilty of a crime, he or she can be tried again. Protection from other people's acquittal is not a fundamental right in India; rather, it is a statutory right. The Code of Criminal Procedure, not the Constitution,

#### *5. Double Jeopardy: Emerging Issues*

provides this kind of protection.

A rule known as the doctrine of double jeopardy states that no one should be put in danger twice for the same offense. Article 20(2) of the Indian Constitution states--"No person shall be arrested and punished for the same offense more than once." The Fifth Amendment to the United States Constitution was the source of the doctrine.

#### **1.4 Grounds for Applicability Of The Doctrine Of Double Jeopardy**

In legal parlance, "jeopardy" refers to the threat that defendants in criminal cases face, such as punishment or imprisonment. Double jeopardy has been cited as a valid defense in three instances<sup>6</sup>:

1. 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 that violates the law at the time and is done or not done.
2. The investigation or proceeding must have taken place in front of a court or other judicial body.
3. The person must have been detained and punished in the previous procedure.
4. It must be the same offense for which he was previously found guilty and given a sentence.

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#### *6. Double Jeopardy By Staurt Woods*

## 1.5 Imperatives of Double Jeopardy

It's possible that the double jeopardy clause doesn't always apply. Mostly through legal interpretations throughout history, the courts have developed some principles for determining the application of double jeopardy as a valid defense.

**Civil action:** The defense of double jeopardy can only be used in criminal court, not in civil court. For the same offense committed in criminal court, the defendant cannot defend himself in civil court. For instance, B's family can sue in both civil and criminal courts if A killed B in a drunken driving case. They can sue in civil court to get the money back from the "B." "A" cannot use double jeopardy to defend him in a civil proceeding to avoid being punished for his crime. However, in criminal court, he could use double jeopardy to defend himself<sup>7</sup>.

**Jeopardy must get started:** Before applying the double jeopardy doctrine, the executive authorities must first put the defendant in danger. In order for defendants to use the double jeopardy doctrine as a defense, they must first be tried. The case is put in jeopardy as soon as the trial jury is called in<sup>8</sup>.

**The game must end:** Jeopardy needs to start and end the same way. To put it another way, the case must come to a conclusion before the double jeopardy doctrine can be used to stop the defendant from being arrested and punished for the same crime. Before the case is presented to the jury or after the

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7. <https://lawtimesjournal.in/dctrine-of-double-jeopardy/>

8. *Constitutional Law of India, V.D.Mahajan, —Eastern Book Company*

sentence has been served, when a judge declares an acquittal. Most of the time, the danger is over when the court makes a decision.

## 1.6 Problems while implementing Doctrine of Double Jeopardy

There is a great ambiguity with respect to the application of Doctrine of Double Jeopardy in Indian Legal jurisprudence as is palpable from various judicial decisions in India. The

present research work endeavours to unravel situations to put some truce to such legal paradoxical equations in contemporary India.

### 1.7 Famous Case Studies

The Study of *Doctrine of Double Jeopardy in India* is not being done for the first time. There is plethora of the studies and judicial decisions reflecting the events when this study has been undertaken by myriad researchers in India and abroad. Various previous studies could be cited as:

I. According to the courts, the maxim "nemo debet bis vexari si constat curiae quod sit pro una et eadem causa" is at the heart of the double jeopardy doctrine; that is, no one should be vexed twice if it appears to be for the same cause. In the case *Union of India v. P.D. Yadav* (2001), the court made this clear.<sup>9</sup>

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9. <https://indiankanoon.org>

II. The Supreme Court made the following decision in *State of Bihar v. Murad Ali Khan*, addressing the issue of double jeopardy and taking into account the provisions of Section 26 of the General Clauses Act:

The same act must be a violation of multiple laws for the prohibition to be effective. A double punishment is permissible if two distinct offenses with distinct components are enacted under two distinct laws<sup>10</sup>.

III. In *Union of India and Others v. Sunil Kumar Sarkar*, AIR 2001 SC 1092, Court considered the argument that the Central Rules proceedings regarding disciplinary aspects and misconduct cannot be held because doing so would amount to double jeopardy and violate Article 20 (2) of the Constitution. The Court explained that the Central Rules proceedings deal with the disciplinary aspect of the misconduct, whereas the Court Martial proceedings deal with the penal aspect. Since the two proceedings do not overlap in any way, the doctrine of double jeopardy could not be invoked. The court

relied on its previous decision in *R. Viswan & Ors. Vs Union of India*, AIR 1983 SC 658 when making its decision<sup>11</sup>.

IV. In the case of *Union of India v. P.D. Yadav*, (2002) 1 SCC 405, the court addressed the issue of double jeopardy in a case in which the official's pension had been forfeited because he had been convicted by a Court-Martial. The verdict was:

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10. <https://blog.ipleaders.in>

11. <https://www.pathlegal.in>

"The well-known maxim *nemo debet bis vexari si constat curiae quod sit pro una et eadem causa* embodies this principle, which states that no one ought to be vexed twice if the court determines that it is for the same cause." The doctrine of double jeopardy protects people from being tried twice for the same crime. Infractions such as criminal breach of trust, misappropriation, cheating, and defamation, among others, are covered by provisions in Articles 20 to 22 of the Indian Constitution may result in criminal prosecution as well as civil litigation for the purpose of obtaining compensation in the form of damages, unless a legal restriction exists. A person is tried for misconduct and passing an order in violation of Regulation 16 in the General Court Martial proceedings<sup>12</sup>.

V. It is abundantly clear from the judgments in the 1954 case *Venkataraman v. Union of India* that an investigation is distinct from a prosecution. This was alleged, stating that the inquiry commissioner conducted an investigation into the accused after he was fired from his job. He was accused of violating the *Prevention of Corruption Act of 1988* and the *Indian Penal Code of 1860* following his discharge. He argued that he was in double jeopardy, but the Supreme Court ruled that the inquiry the inquiry commissioner conducted to terminate his employment was not a prosecution, so charges could be brought, and the defense of double jeopardy was rejected<sup>13</sup>.

12. <https://lawtimesjournal.in>

13. <https://indiankanoon.org>

VI. On the other hand, the doctrine of double jeopardy can only be applied when the punishment is for the same offense. *Leo Roy v. Superintendent District Jail (1957)*, in which the Supreme Court stated that even though the person had been tried and convicted under the Sea Customs Act, 1878, they could be put on trial again under the Indian Penal Code, 1860 because there were two distinct charges and offenses, the doctrine cannot be applied<sup>14</sup>.

VII. In the case of a continuous offense, each day that a person commits a crime is treated as if it was a separate offense, and the accused person may receive different punishments for each one. In the case of *Mohammad Ali v. Sri Ram Swaroop (1963)*, the High Court of Judicature at Allahabad ruled that this does not amount to double jeopardy<sup>15</sup>.



## 1.8 Conclusion

The rule against Double Jeopardy stipulates that no one may be put in peril twice for the same offence. It is a concept originated from “Natural Justice System” for the protection of integrity of the “Criminal Justice System”. The concept of Double Jeopardy follows the “audi alterm partum rule” which means a person cannot be punished twice for the same offence. But it is to be noted that there are some restrictions too in the Indian laws related to Double Jeopardy.

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<sup>14</sup> <https://www.pathlegal.in>

<sup>15</sup> <https://lawtimesjournal.in>

Here, my opinion is that, there is a need of active participation of Judges; they have to keep in mind of those offences which constitute the same offence & those too which do not. But it is clear in the study that if a person has been prosecuted for an offence but acquitted, then only he can be prosecuted for the same offence again & punished.

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