

PRINCIPAL OF DOUBLE JEOPARDY

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Abstract

The Principle of double jeopardy and the concept of autrefois convict and autrefois acquit were explained in Union of India V. Purrushottam¹. It was held by the court that the doctrine of double jeopardy in Art 20 (2) is circumscribed only to Prosecution culminating in conviction i.e. it imbibes only the Principle autrefois convict and does not imbibe within it the Principle of autrefois acquit.

In the Indian law, Protection against double jeopardy was earlier given with the enactment of criminal Procedure Code 1973 (Cr. PC) in section 300 or Section 71 of Indian Penal Code or Section 26 of General clauses Act, 1897. Both section 300 of Cr. PC and Section 26 of General Clauses Act, 1897, employ the expression "same offence". The code laid down that a Person, who had once been convicted or acquitted, was not to be tried again for the same offence.

Clause (2) of Article 20 provides Protection against "double jeopardy". The clause provides as "No Person shall be Prosecuted and Punished for the same offence more than once". This clause enacts the well-known Principle of criminal jurisprudence². That "no one should be put in jeopardy twice for the same offence"³. The object is to avoid the harassment which must be caused to a person for successive criminal proceedings where only one crime has been committed.

Keywords: Principle, double jeopardy, Autrefois convict, autrefois acquit, culminate, conviction, imbibe.

Introduction

Art 20 (2) provides that "no person shall be prosecuted and punished for the same offence more than once." However, a government servant prosecuted and convicted by a Court of Law can be

punished under same offence. Similarly, it does not ban proceeding before civil court for disobedience of an injunction along with criminal proceedings.

There are three common law maxims concerning the subject:

1. Nemo bis Punitur Pro eodem delicto meaning no man is Punished twice for the same offence.
2. Nemo bis Vexaridebet Pro eadem Causa meaning no man should be harassed twice for the same offence.
3. Nemo debet bis Puniri uno delicto meaning no one should be punished for one fault.

Main Text :

"Nemo bis Punitur Pro eodem delicto" states that a man cannot be brought into danger for one and the same offence, more than once. Thus, having once been Prosecuted and punished for the commission of an offence, a person should not be put in jeopardy of life or limb for a second time for the same offence. After a person has been prosecuted, he cannot be tried again on the same charge; irrespective of the result of the Prosecution. If he is prosecuted again for the commission of the same offence for which he has already been Prosecuted, he can take the plea of autrefois acquit or autrefois convict meaning thereby, that he has previously been acquitted or convicted for the same offence in respect of which he is being tried again.

The protection contained in Art 20 (2) would be available only if following essential are complied with

1. The person must be accused of an offence.
2. The person must have been prosecuted before a court or a judicial tribunal.
3. The person must have been punished after his prosecution before a court or a judicial tribunal.
4. The person must be prosecuted for the second time before a court or a judicial tribunal.
5. The "offence" must be the same in both the proceedings.

1. The Person must be accused of an offence :- The term offence means any act or omission made punishable by any law for the time being in force⁴.
2. The Person must have been prosecuted before a Court or a judicial tribunal :- The term "Prosecution means initiation or starting of any proceeding criminal in nature, before a court, or judicial reibun⁵. It means that Art 20 (2) would have no application where the proceedings held under any revenue authoreties⁶.
3. The Person must have been punished after his prosecution before a Court or a judicial Tribunal :- The prosecution against "double jeopardy" contained in Art 20 (2) would be available only when the accused has been not only Prosecuted but also convicted i.e. Therefore, if there is no punishment for the offence as a result of the Prosecution clause (2) of the Article 20 would have no application. Both prosecution and punishment must co-exist for the operation of Article 20(2). It thus, follows that where a person having been prosecuted for an offence is acquitted; he can be prosecuted for the "same offence again"⁷.

It may be noted that the ambit of protection against "double jeopardy" embodied in Art 20 (2) is narrower than that under the English and American rule. Under the English common law the maxim nemo debet bis vexeri explain that a person can plead as a complete defence, his formal acquittal or conviction if he is indicted again for the same offence in a court, i.e. he can take the plea of autrefois acquit or autrefois convict. Similarly, under the U.S. Constitution which providesinter alia, " nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb⁸, the Protection is available not only against a second punishment but even against the second trial for the same offence irrespective of whether the accused was acquitted or convicted in the first trial.

4. The Person must be prosecuted for the second time before a court or a judicial tribunal Art 20(2) would have no application where the person is prosecuted and punished for the second time, but the subsequent proceedings is merely the continuation of the previous proceeding as is the case of an appeal against acquittal⁹ or an appeal against conviction¹⁰. However, removal of an employee from service on

his being habitual in committing indiscipline and disorderliness, would not amount to double jeopardy¹².

5. The "offence" must be the same in both of the Proceedings Art 20 (2) Prohibits the imposition of punishment twice for the same offence¹³.

Double jeopardy and Issue Estoppel

The Plea of "double jeopardy" may be distinguished from the rule of issue estoppel". The rule of issue estoppel precludes evidence being led and a specific finding recorded at an earlier criminal trial before a competent court. The rule relates only to the admissibility of evidence¹⁴. The rule is also known as "cause of action estoppel"¹⁵. The rule is held to be a fact of doctrine of "actrefouis acquit"¹⁶ which enable a person to plead as a complete defense his former acquittal if he is indicted again for the same offence in court. The rule of issue estoppel thus relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court in a previous trial on a factual issue¹⁶.

Conclusion :

Art 20 of the Indian Constitution Provide armour to the person and citizen of India in three ways as

1. Ex Post facto Laws Art 20 (1)
2. Double jeopardy Art 20 (2)
3. Self-incrimination Art 20 (3)

It alleviates the dictatorship whim and desire of autocrate loving society. It helps to establish the principles of rule of law and Natural justice.

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