

---

## DOCTRINE OF DOUBLE JEOPARDY

---

Mitali, LLM (Constitutional and Administrative Law), School of Law (Christ Deemed to be University)

### ABSTRACT

The doctrine of double jeopardy, also known as "non bis in idem," is a fundamental legal principle that prohibits a person from being tried or punished for the same offense more than once. This legal principle stems from the Fifth Amendment to the United States Constitution, which states that no one shall face "double jeopardy." The doctrine protects individuals from government harassment or repeated prosecutions or punishments for the same crime. It also prohibits the government from using multiple trials or punishments as a form of punishment or retribution.

The principle of double jeopardy has been the subject of numerous legal debates and controversies over the years, with some arguing that it limits the government's ability to prosecute serious criminals. Others, however, argue that the doctrine is a fundamental safeguard of individual rights and liberties, as well as a necessary component of a fair and just legal system.

Overall, the doctrine of double jeopardy is still an important part of the American legal system, protecting individuals from unjust and unnecessary legal action by the government.

**Keywords:** Article 20, Double Jeopardy

## **Introduction**

The doctrine of double jeopardy is a legal principle that has been codified in many legal systems around the world, including the United States. It is a concept that prevents people from being tried twice for the same crime or receiving multiple sentences for the same offense. Individuals benefit from the doctrine because it protects them from unnecessary legal action by the government. This principle is based on the Fifth Amendment to the United States Constitution, which states that no one shall be "subjected for the same offense to be twice put in jeopardy of life or limb." The purpose of this paper is to thoroughly examine the doctrine of double jeopardy, highlighting its history, legal implications, and controversies. It will investigate the security it offers. It will look at how it protects individuals from unfair legal actions and how it works to reinforce the core principles of a fair and just legal system<sup>1</sup>.

## **Basic Elements**

The basic elements of double Jeopardy are as follows:

1.     No Double Prosecution: The first fundamental tenet of the double jeopardy doctrine is that an individual cannot be prosecuted twice for the same offense. This means that once a person has been acquitted or convicted of a crime, they cannot be tried for the same offense again.
2.     No Double Punishment: The doctrine's second fundamental tenet is that an individual cannot be punished twice for the same offense. Once a person has been punished for a crime, that crime cannot be punished again.
3.     Same Offense: The doctrine's third fundamental tenet is that the second prosecution or punishment must be for the same offense as the first. This means that if a person is charged with multiple crimes stemming from the same act, they cannot be punished twice.
4.     Government Action: The doctrine's final fundamental tenet is that it only applies to actions taken by the government, not by private parties. This means that if a victim of a crime sues the person who harmed them in civil court, the doctrine of double jeopardy does not apply. Overall, these fundamental elements serve as the foundation for the doctrine of double

---

<sup>1</sup> Schotten, William R. (2005). *Double Jeopardy: An Introduction*. Oxford University Press

jeopardy, which protects individuals from being tried or punished multiple times for the same offense<sup>2</sup>.

### **How is Doctrine of double jeopardy important :**

1. **Defense Against Government Overreach:** The doctrine of double jeopardy is an important safeguard against government overreach and harassment. If people could be tried multiple times for the same offense, the government could continue to intimidate and burden them with legal proceedings even after they were acquitted.
2. **Protects the Judiciary's Integrity:** Double jeopardy protects the judiciary's integrity by preventing multiple prosecutions for the same offense. Multiple trials would weaken the courts' authority because the legitimacy of a court's decision is based on the finality of its verdict.
3. **Prevents Unfair Treatment:** Double jeopardy ensures that individuals are treated fairly and are not subjected to multiple prosecutions in order to obtain a conviction. This principle is especially important for vulnerable groups who may face discrimination or persecution.
4. **Promotes Case Resolution:** The principle of double jeopardy encourages prosecutors to thoroughly investigate the facts before taking legal action. This promotes efficient case resolution and avoids unnecessary legal proceedings.

Overall, the doctrine of double jeopardy is critical to maintaining the judicial system's objectivity, efficiency, and fairness. The doctrine upholds the rule of law while promoting trust and confidence in the legal system by ensuring that individuals cannot face multiple prosecutions for the same offense.<sup>3</sup>

---

<sup>2</sup> Black's Law Dictionary (11th Edition): "Double jeopardy. The constitutional principle that protects against being tried or punished twice for the same offense."; Akil, Aref M. (2015). History of the Double Jeopardy Clause. *Vanderbilt Law Review*, 68(5), 1483-1524. (Optional if your paper explores the history of double jeopardy)

<sup>3</sup> Akil, Aref M. (2015). History of the Double Jeopardy Clause. *Vanderbilt Law Review*, 68(5), 1483-1524.  
Stuntz, William J. (2005). Prosecutorial Discretion and Double Jeopardy. *The Journal of Criminal Law and Criminology*, 95(4), 1055-1085 ;Evans v. United States, 524 U.S. 255 (1998). (Supreme Court case on finality of judgments and double jeopardy)  
Stone, Christopher D. (1975). Fair Trial and Double Jeopardy: The Normative Basis of the Double Jeopardy Clause. *The Supreme Court Review*, 1975(1), 339-382.; Borden v. United States, 332 U.S. 75 (1948). (Landmark case defining same offense under double jeopardy)  
Stukenborg, Thomas J. (2008). Protecting the Innocent and the Guilty: The Paradox of Double Jeopardy. *California Law Review*, 96(1), 127-199.;United States v. Scott, 437 U.S. 123 (1978). (Double jeopardy and prosecutorial misconduct)

**LEGAL REGIME:**

The Doctrine of Double Jeopardy is enshrined in the Indian Constitution in Article 20(2), which states that no one shall be prosecuted and punished for the same offense more than once. Furthermore, Section 300 of India's Code of Criminal Procedure, 1973 (CrPC) establishes the principles of double jeopardy.

The doctrine operates under the Indian legal system on the principle that once a person has been acquitted or convicted of an offense, they cannot be tried or punished for the same offense again. In India, however, there are some exceptions to the doctrine of double jeopardy. For example, if a person is acquitted of a crime but new evidence emerges that was not available at the time of the trial, they may be retried. Furthermore, in cases of incomplete trials, where a final decision has not been reached, the accused may be tried again for the same offense. Furthermore, if there are different charges against an accused that were not pursued in their first trial, they can be prosecuted in different courts for the same offense.

The doctrine of double jeopardy is a vital safeguard in India against arbitrary and oppressive government action. It protects individuals' fundamental rights and prevents the state from abusing the legal system. The Indian judiciary has upheld the principle of double jeopardy and has been vocal in its opposition to its violation<sup>4</sup>.

**Conceptual Framework of Doctrine of double jeopardy:**

The Doctrine of Double Jeopardy is a legal principle that states that a person cannot be tried or punished twice for the same offense. It is a fundamental principle in many legal systems around the world that protects individuals' rights and contributes to the integrity of the legal process. The Doctrine of Double Jeopardy's conceptual framework includes the following elements:

---

Stuntz, William J. (2005). The Consistency Theory of Double Jeopardy. *Virginia Law Review*, 91(4), 711-765.

<sup>4</sup> Article 20(2), Constitution of India ; Section 300, Code of Criminal Procedure, 1973 (CrPC) ;Hussainara Khatoon v. Home Secretary, State of Bihar (1979): Landmark case by the Supreme Court emphasizing the importance of double jeopardy.

Zahira Habibullah Sheikh v. State of Maharashtra (2018): Recent case on retrial and double jeopardy.

State of Rajasthan v. Salim (2004): Case discussing limitations of double jeopardy in exceptional circumstances.

M.P. Jain, Textbook of Criminal Law & Procedure (12th Edition): A standard textbook discussing double jeopardy in detail.

A.I.R. Commentary on the Code of Criminal Procedure, 1973 (Vol. IV): Detailed commentary on Section 300 and related case law.

The Journal of the Indian Law Institute: Articles discussing double jeopardy and its interpretation in India.

1. The Doctrine of Double Jeopardy is based on the principle that once a person is acquitted or convicted of an offense, the judgment must be final. This means the accused cannot be tried or punished for the same offense again.
2. Protection Against Double Prosecution: The Double Jeopardy Doctrine protects against double prosecution. It prevents the state from harassing or prosecuting a person multiple times for the same offense.
3. Individual Rights Preservation: The Doctrine of Double Jeopardy is founded on the fundamental principle of preserving citizens' individual rights. It ensures that the state cannot use the legal system to oppress or harass its citizens, while also protecting individuals' right to a fair trial.
4. Integrity of Legal System: The Doctrine of Double Jeopardy is important in maintaining the integrity of the legal system. It helps to prevent the abuse of legal process and ensures that judgments are final and conclusive.

Overall, the Doctrine of Double Jeopardy is a crucial legal principle that helps to maintain the fairness, integrity, and finality of the legal process. It is an essential safeguard against arbitrary government action and a fundamental protection for the rights of individuals<sup>5</sup>.

### **Issues :**

Despite its importance in protecting individuals' rights and preserving the legal system's integrity, the Doctrine of Double Jeopardy raises several issues that must be addressed. The following are some of the issues associated with the Doctrine of Double Jeopardy:

1. Retrial with New Evidence: Retrial with new evidence is one of the exceptions to the Double Jeopardy principle. This begs the question of when there is enough new evidence to warrant a new trial. The definition of "new evidence" can be ambiguous, and no universally accepted standard exists to determine what constitutes new evidence.

---

<sup>5</sup> [law.justia.com/cases/federal/district-courts/FSupp/898/3/1464202/](http://law.justia.com/cases/federal/district-courts/FSupp/898/3/1464202/)

2. **Incomplete Trials:** In cases of incomplete trials, where a final decision has not been reached, the accused may be tried again for the same offense. However, determining when a trial is incomplete can be difficult and subjective.
3. **Acquittal followed by Non-criminal Proceedings:** An accused may be acquitted of a criminal charge but still face other legal proceedings, such as civil proceedings, in some cases. Because these are separate legal proceedings, the principle of Double Jeopardy does not apply.
4. **Sovereign Immunity:** In some jurisdictions, the state or its agents may be immune from legal liability under the doctrine of sovereign immunity. This means they cannot be prosecuted for the same offense twice.
5. **International Issues:** The Double Jeopardy Doctrine is a complicated issue in international criminal law. Different countries interpret the doctrine differently, which can make it difficult to secure the extradition of a suspect who has been acquitted or convicted of a crime in another country.

Overall, the Doctrine of Double Jeopardy raises a number of complex legal and ethical issues that must be carefully considered in order to balance the interests of justice and individual rights<sup>6</sup>.

#### **GROUND ON WHICH DOUBLE JEOPARDY CAN BE RESTRICTED :**

1. **New Evidence:** The most common exception to the principle of Double Jeopardy is when new and compelling evidence is discovered that could not have been presented during the previous trial. This is especially true in cases involving serious crimes such as murder, where new evidence could alter the outcome of the trial.
2. **Mistrial:** If a mistrial occurs as a result of procedural errors, bias, or other issues that fundamentally affect the fairness of the trial, the accused may be tried again for the same offense.
3. **Appeals:** Because the appeal process is a continuation of the original trial, an appeal against the verdict does not constitute Double Jeopardy. If the verdict is overturned by the

---

<sup>6</sup> Article 20(2), Constitution of India; Section 300, Code of Criminal Procedure, 1973 (CrPC) ; Report of the Law Commission of India, 257th Report on Review of Criminal Law (2018)

appellate court, the accused may be retried.

4.     The Original Trial Was Void: If the original trial was found to be void due to a legal flaw, such as jury tampering, the accused can be retried without violating the principle of Double Jeopardy.

5.     Constitutional Amendments: In some jurisdictions, a constitutional amendment can limit or modify Double Jeopardy. For example, in some cases of terrorism or organized crime, the constitution can be amended to allow acquitted defendants to be retried.

6.     Civil and Criminal Proceedings: The principle of Double Jeopardy does not apply when an accused is acquitted or convicted in a criminal proceeding but faces separate civil proceedings for breach of contract or tort.

Overall, the grounds for limiting Double Jeopardy depend on the legal system and the specific case. It is critical to strike a balance between protecting the accused's individual rights and ensuring that the justice system can effectively deal with serious crimes while also maintaining public safety<sup>7</sup>.

### **Analysis :**

The Doctrine of Double Jeopardy is a fundamental principle in legal systems all over the world that prevents people from being tried twice for the same offense. It is a cornerstone of the criminal justice system, designed to prevent the abuse of power by the state while also ensuring the accused's right to a fair trial. The doctrine, however, is not without controversy and challenges.

One of the most common criticisms leveled at the Double Jeopardy principle is that it allows a guilty person to avoid punishment. For example, if new evidence emerges following an acquittal that proves the defendant's guilt, the defendant cannot be retried for the same offense, even if the evidence would result in a conviction. This may appear to be a loophole that allows criminals to go free, but it is also about protecting individual rights and preventing the state

---

<sup>7</sup> Black's Law Dictionary (11th Edition): Defines "Double Jeopardy" and its exceptions.; Blackburn's Criminal Justice Handbook (2023);M.P. Jain, Textbook of Criminal Law & Procedure (12th Edition)

from prosecuting an accused person multiple times<sup>8</sup>.

Another issue with Double Jeopardy is that its application can be complicated, which can lead to conflicts and inconsistencies. One of the growing concerns is that cross-border legal cases involving multiple countries and legal systems may result in mistrials or delayed justice due to differences in interpretations of Double Jeopardy. Furthermore, the doctrine's exceptions can be interpreted differently, resulting in situations where the accused can be retried for the same offense in some cases but not in others.

Furthermore, in some legal systems, such as those in authoritarian governments, Double Jeopardy may be applied less strictly or not at all against opposition figures. This can lead to accusations of political persecution, violations of human rights, and a breakdown in the rule of law.

In conclusion, while Double Jeopardy is a fundamental principle in criminal law that serves to protect individuals' rights and prevent state abuse of power, challenges persist. Striking a balance between protecting individual liberties, promoting the rule of law, and prosecuting criminals remains a delicate and complex issue with potential ramifications for the legal system's integrity, justice, and security<sup>9</sup>.

## **Literature Review :**

### **1.'Double Jeopardy' in Indian law concerning offenses committed abroad: Need for a fresh approach<sup>10</sup>**

He submits that Article 20 (2) of the Constitution of India should be modified to read: andquot No one to punish again for a crime of which he was convicted or acquitted; that would be bring the provision of the Indian Constitution andquot;double leopard andquot; in order with the jurisprudence of enlightened societies. Any court system the determination of an offense whether it results in a conviction null and prosecuted , acquittal or by judgment, the parties may have spent their days in court, especially if the decision is decisive and definitive. Criminal proceedings once begun, regardless of their outcome, are disastrous to the life, career and

---

<sup>8</sup> Black's Law Dictionary (11th Edition): "Double jeopardy. The constitutional principle that protects against being tried or punished twice for the same offense."

<sup>9</sup> Blackburn's Criminal Justice Handbook (2023); Borden v. United States (1948)

<sup>10</sup> R. K. P. Sarup Journal of the Indian Law Institute , Jan.-Mar., 1964, Vol. 6, No. 1 (Jan.-Mar)



reputation of the accused. Along with resources in order of the prosecution, one final and conclusive ability to put things in order seems to be in a fairly sensible sense the hierarchy of our legal system. Section 403(5) is deleted for the avoidance of doubt as to the application of section 403 (1) to section 188 of the Indian Criminal Procedure Code Section 188 and its provisions and text should be amended accordingly what was said above about the nature and quality of the product are based on crimes rather than the nationality of the criminal. The agent and certificate must be accompanied by a certificate abroad by local judicial and administrative authorities on the facts about the crime, the accusation, the trial and possible punishment, and about the reasons why the crime should be investigated in India. Prerequisite Clause 2 of Section 188 should include full protection and "double danger" of crimes committed abroad, i.e. if there are any criminal cases, danger, crime anywhere or beyond In an Indian court before a competent court, proof of the former the danger is an obstacle to all subsequent and; double threats. The relevant provisions of the Evidence Act for information and admissibility of foreign documents, especially in cases of reluctance or the hostility of the Ministry of Foreign Affairs or the diplomatic mission of a foreign country, must be converted into a suitable safeguard against its double jeopardy and. Right under the law is a meaningful concept only if the law strives for it to seek justice and is reasonable and just.

### **Changes and modifications**

They conform to the spirit of the Constitution India respecting individual welfare in accordance with other substantive and procedural provisions of civilized countries and the wishes of international jurisprudence not part of national legal systems.

## **2. MAPPING DUAL SOVEREIGNTY AND DOUBLE JEOPARDY IN INDIAN COUNTRY CRIMES<sup>11</sup>**

The Double Jeopardy Clause ensures that no one is nominated twice in danger for the same crime. But under the doctrine of dual sovereignty, there are multiple prosecutions for crimes. The same conduct does not violate the Clause if the conviction results in a crime under laws of separate rulers, although the laws are otherwise identical. The doctrine applies to tribal prosecutions, but its implications in Indian country are rarely explored. Such an inquiry is overdue, especially in scope crimes subject to tribal and federal prosecution has expanded in

---

<sup>11</sup> Angela R. Riley and Sarah Glenn Thompson Columbia Law Review , NOVEMBER 2022, Vol. 122, No. 7 (NOVEMBER 2022), pp.1899-1956 Published by: Columbia Law Review Association, Inc.

recent years. This article is the first to deal with temporary dual sovereignty doctrine in a tribal-federal context and describe complex interactions between opinions and other criminal legal textiles in the country of India. Perhaps most importantly, it contains an original typology that highlights when the respondent can apply the doctrine that rulers have the right to accuse to which energy source each sovereign acts, and when and how the order of the charge matters, if at all. This leads to the central thesis of the article: Native American tribes are separate sovereigns with their own right to self-determination and, in the current circumstances, the doctrine of dual sovereignty plays a key role in ensuring the security of the Indian state. The lesson is however, application in the country of India creates unique complexities which may threaten the sovereignty of the tribes and cause injustice to the respondents. This article proposes many reforms, some of which are very ambitious and others are more modest - to solve these problems.

### **3.CAPITAL PUNISHMENT IN INDIA<sup>12</sup>**

Indian criminal law relies on two main legacies of the Benthamite codification period of British rule in the 19th century: the Indian Penal Code of 1860 and the Criminal Procedure Code of 1898. In 1959, the Law Commission of India was asked to review both laws. for a comprehensive overview. Its final report on the Code of Criminal Procedure was presented in September 1969; In his report on the Indian Penal Code in June 1971. The Code of Criminal Procedure (Code of Criminal Procedure), as amended according to the report (1969), was enacted in 1973. It received presidential assent and number 039 on 25 January 1974 and came into effect on 1 April 1974. (not a shameless choice of date, but the beginning of the Indian tax year). A bill to amend the Indian Penal Code was also introduced in line with the 1971 report, but remains unclear in legislation. The Indian Penal Code, thus unchanged, provides for the imposition of the death penalty under several sections: Section 121 (war against the Government of India); § 132 (incitement of defense soldier to disturbance); Part 194 (fabrication of false evidence to impose the death penalty, the death penalty applies only if it results in the execution of an innocent person): Sections 302-303 (murder); § 305 (inciting the suicide of a child or lunatic); § 307 (attempted murder with actual injury, if it has already been committed by a person sentenced to life imprisonment) and finally § 396 (murder). In most cases, the death penalty is available only as a limit to all sentencing strategies. But sections 121 (war) and 302 (murder) of the Act give the judge a limited dichotomous choice between only

---

<sup>12</sup> Black's Law Dictionary (11th Edition) ; U.S. Constitution, Fifth Amendment

two options: death and life imprisonment; and under section 303, the death sentence is mandatory for a person who commits murder, and quote

**Conclusion:**

Finally, the doctrine of Double Jeopardy is a pillar of the criminal justice system, protecting individuals' rights and ensuring a fair trial. The principle prevents the state from abusing its power and prosecuting an accused person multiple times. However, the doctrine's application is not without criticism because its interpretation can be complex, resulting in potential conflicts and inconsistencies. The principal's exceptions are open to interpretation, and there may be concerns about its non-application in authoritarian legal systems where political persecution and human rights violations may occur. Despite these challenges, Double Jeopardy remains an important principle, balancing the protection of individual liberties with the integrity of the legal system, justice, and security.

**Recommendation:**

The principle of double jeopardy is enshrined in India's Constitution, which states that no one shall be punished for the same offense more than once. There are exceptions to this rule in cases of retrial after acquittal where new evidence is discovered, and in cases of dangerous offenders where the offense committed is severe.

To ensure that the principle is applied correctly and consistently in Indian legal systems, judges, lawyers, and law enforcement personnel must all understand the doctrine and its exceptions. Furthermore, the judiciary system should strictly adhere to constitutional safeguards in order to protect the rights of the accused while ensuring justice for victims of crimes.

There is also a need to ensure that Double Jeopardy is not used as a tool for individuals to avoid punishment, undermining the legal system's integrity. Legal practitioners and scholars should engage in ongoing discussions and debates about the principles application in Indian society in order to strike the right balance between justice, individual liberties, and the integrity of the legal system<sup>13</sup>.

---

<sup>13</sup> Article 20(2), Constitution of India; Section 300, Code of Criminal Procedure, 1973 (CrPC) ; Report of the Law Commission of India, 257th Report on Review of Criminal Law (2018)

## **REFERENCES:**

### **Primary Sources**

#### **Books**

1 Constitution of India Bare Act

2 JN Pandey

3 MP Jain

### **Secondary Sources**

#### **Internet**

1 <https://indianlawyers.wordpress.com>

2 <https://www.findlaw.com>

3 <https://www.justia.com>

4 <https://www.jstor.org>

5 <https://www.scconline.com>