

Protection Against Double Jeopardy

▪ Pages: 66– 82 ▪ Vol. III, No. II (Fall 2024) ▪ p- ISSN: 3078-3666 ▪ e- ISSN: 3078-3283

Muhammad Afzal: Legal Intern/Trainee District & Sessions Court Peshawar, KP, Pakistan.

Corresponding Author: Muhammad Afzal (Legal Intern/Trainee District & Sessions Court Peshawar.
Email address: mm.afzal123@gmail.com)

Contents

- [Introduction](#)
- [Relevant Provisions](#)
- [Essentials of Under Section 403 of the Criminal Procedure Code](#)
- [Double Jeopardy in Pakistan](#)
- [Double Jeopardy Verses Acquittal and Conviction](#)
- [Violation of Two Laws](#)
- [Competent Court](#)
- [Constitution of India Article 20 clause \(1\)](#)
- [Indian Criminal Procedure Code 300](#)
- [General Clauses Act 1897](#)
- [Supreme Court of India about Double Jeopardy](#)
- [Indian and Pakistan Double Jeopardy Comparisons](#)
- [Indian \(C r P C\) Attachment of Jeopardy](#)
- [Conclusion](#)

Abstract: *The fundamental rights described in the constitution of the Islamic Republic of Pakistan (1973) as well as The Indian Constitution postulates the concept of double jeopardy. A well-known maxim "autrefois convict" prohibits any person, who has been convicted of a crime in the competent court, from being retried for the same offense or cause. Moreover, "autrefois acquit" prevents a person who has been acquitted by a court from being tried again for the same offense. These provisions safeguard the constitutional rights of the individuals. Specifically, in respect of the General Clause Act 1897, section 26, which addresses the concept of double jeopardy, stating that no individual or person can be punished or prosecuted again for the same cause. This act applies to both Pakistan and India, highlighting their similarity in this respect.*

Keywords:

Double Jeopardy, Fundamental Rights, Constitution, Protection, Law, Criminal Law, Family Law, State, Justice

Introduction

The concept of double jeopardy provides that none of the authorities has the right to try an individual for the same offense in multiple jurisdictions. The fundamental objective is to safeguard the rights of the offenders against malicious intent and ensure the protection of the accused from being prosecuted in two different places as given by law. In the meantime, the law permits punishment and allows the initiation of legal proceedings against an individual in a single judicial tribunal, provided that it must possess judicial authority. The court, possessing jurisdictional powers, can also issue summons to hear both, the offenders and the victim, involved in the case in order to serve justice. The main purpose of double jeopardy in this scenario is to safeguard offenders from facing multiple punishments, prosecutions, or trials. The Constitution has clearly

defined the rights of the offenders so that they can only be punished once for the same offense.¹

The requisite of double jeopardy ensures that retrospective punishment should not be imposed on an offender. Legally and constitutionally the right of the offender is protected from such punishment, as the dynamics of the law is involved in safeguarding individual's rights. The constitution and legal system of both India and Pakistan recognize the right, and their protection from retrospective punishment i.e. individuals who have already been tried and punished by a competent court should not be subject to such change. The punishment is determined according to the Pakistan Penal Code and the Indian Penal Code. As the criminal procedure codes and fundamental rights in both countries appear similar, upon a closer and thorough examination of cases such as PCRLJ in Pakistan and Indian cases related to double jeopardy, differences, and criticisms can be identified. These cases, including the well-known Maqbool Hussain versus the government of India, serve as examples in the courts of law.²

Law clearly and prominently states that, if there are additional charges on an offender related to the same offense, such as theft, murder, or any other crime committed during that specified time and place, then this particular crime will be considered a single crime. It should not be subject to any debate if another trial or FIR has been filed, the charges will be applied based on various resources. Therefore, it is crucial to carefully examine the facts and accurately frame the issues and charges. Moreover, if the offender has committed more than one crime in a single transaction, then there is a procedure in the criminal procedure code (Cr P C) where all crimes committed by that person will be merged into a single case and be prosecuted in a court of law. Crimes of different natures will not be filed separately in different courts, and the competent court will try the case conclusively because of the single offender. As the series of crimes occur in the same place hence, there will be only one charge for them. However, if there are multiple victims then it is at the discretion of the parties aggrieved whether they want to file a single case or separate cases and frame charges conclusively.³

Relevant Provisions

- Article 13 Protection against double punishment and self-incrimination. No person (a) shall be prosecuted or punished for the same offense more than once; or (b) shall, when accused of an offense, be compelled to be a witness against himself (Constitution of Pakistan).
- The relevant provisions of double jeopardy are given under section 403 of the Criminal Procedure Code, 1898, Pakistan (Cr P C).
- Article 20 subclause 2 of the Indian Constitution related to the double jeopardy (Indian Constitution).

Cross References

- The cross-references as per Civil Procedure Code 1908 provided by section 11 deal with the Res judicata related to the double jeopardy principle.

¹ Sharma, K. M. 1971. "Law and Order and Protection of the Rights of the Accused in the United States and in India: A General Framework for Comparison." *Buffalo Law Review* 21: 361.

² Sharma, K. M. 1971. "Law and Order and Protection of the Rights of the Accused in the United States and in India: A General Framework for Comparison." *Buffalo Law Review* 21: 361.

³ Silva, K. B. A. 2000. *Constitutional Rights Relating to Criminal Justice Administration in South-Asia: A Comparison with the European Convention on Human Rights*. Doctoral dissertation, University of Southampton. <http://eprints.soton.ac.uk/id/eprint/464268>.

- According to the Constitution of the Islamic Republic of Pakistan, 1973 article 13 deals with the double jeopardy and the protection of the double jeopardy.
- Section 26 of the General Clauses Act 1897 also relates and is very legit to evaluate the term double jeopardy which will be applicable in general terms like excluding the criminal and civil kind nature of cases.

Essentials of Under Section 403 of the Criminal Procedure Code

There are some essentials of the criminal procedure code which is related to double jeopardy and are mentioned below;

- To ensure protection against Double jeopardy there must be a conviction or an acquittal.
- The second essential is that the judgment issued by the court must have had competency as well as jurisdiction.
- The third essential is that the judgment issued by the competent court must have been enforced.
- The fourth and the very last essential is about the fact that a retrial cannot be based on the same facts or the same offense committed against the same individual.

Double jeopardy is generally based on certain essential ingredients as we discussed above for example, one such essential is that the trial must have already taken place in a competent court, resulting in either a conviction or acquittal. This decision by the competent court must stand, meaning that no appellate or divisional court has overturned it. Here, the same trial cannot be initiated for the same offense and same case. It is important to note that if there was uncertainty regarding the nature of the offense at the time of charging, and a judgment of acquittal or conviction was passed based on the charges brought forth, no new trial can be initiated for a different offense stemming from the same set of facts.⁴

Similarly, in Section of Charge section 237, it is impossible for the court to issue the frame of charge, keeping in view the facts and circumstances which were placed before the court that the offense committed is completely different after the collection of evidence, and the court either convicts or acquits the person. In such cases, it is not permissible to conduct a retrial based on these facts. Article 13 of the constitution of The Islamic Republic of Pakistan deals with fundamental rights that "no person can be punished twice for the same offense".

As we discussed above the essentials for double jeopardy there are certain exceptions to it also. Subsection 237 deals with exceptions, the first exception is that if in one transaction many offenses have been committed and out of these offenses on one the trial has been completed, and later on it has been noticed that a distinct offense was also committed in this regard, the trial can be started individually of such offense. For example, in section 3 of article 237, an offense was committed which constituted a crime. For instance, if a person caused harm to someone and the injury resulted in a fatal head injury, the trial began. Keeping in view the facts and circumstances the trial was completed and the court declared the punishment. Later on, as the head injury resulted in the person's death if it gets proven that the death was caused by the head injury, then a separate trial for the death can be installed and the person shall be punished accordingly.⁵

⁴ Silva, K. B. A. 2000. *Constitutional Rights Relating to Criminal Justice Administration in South-Asia: A Comparison with the European Convention on Human Rights*. Doctoral dissertation, University of Southampton. <http://eprints.soton.ac.uk/id/eprint/464268>.

⁵ Mezei, Péter. 2013. "‘Not Twice for the Same’: Double Jeopardy Protections Against Multiple Punishments." In *Ius Gentium*, 197–219. https://doi.org/10.1007/978-3-319-01216-2_9.

Double Jeopardy in Pakistan

In this thesis, the main focus involves Section 403 of the Code of Criminal Procedure which highlights the concept of double jeopardy aiming to explore various methods that shed light on the justification behind such punishment. Additionally, this research involves cross-references that support and promote the application of double jeopardy as stated in the aforementioned section. These quotations will be examined in relation to the constitutional framework of the Islamic Republic of Pakistan, especially Article 13 of Pakistan's Constitution. The main objective and focus involved in the evaluation of the explanations in light of Article 13 and further determining the extent of legitimizing the concept of double jeopardy.

Double Jeopardy and Retrospective Effect

Moreover, the purpose and intent of these provisions are similar however, this research report does highlight significant differences which should be carefully analyzed and explained within the context of this research study. The Pakistan constitution prohibits the imposition of dual penalties on an individual or any individual for the same offense or based on the same facts, where such double penalties are based on the concept of retrospective effect. Although there is a fundamental difference between the concept of double jeopardy and retrospective effect, it does have certain resembles, as Double jeopardy safeguards against "any person being punished twice for the same offense," meanwhile retrospective punishment comes into play when "subsequent amendments in the law leads to an increase or decrease in the penalty for an offense for which an individual has already been penalized". Similarly, individuals cannot be subjected to repeated punishments for the same offense, regardless of whether they are acquitted or convicted.⁶

In the interpretation of *Nemobex, dis exam, case law of PLD 2005 Quetta 1*, it does establish that no individual can be vaxed twice for the same offense or guilt. Similarly, none of the individuals will face multiple trials for the same offense, as it will definitely amount to double jeopardy. Section 40 clearly puts forward that once a trial has commenced and the individual is either convicted or acquitted for the guilt or an offense he has committed, no new case or trial be initiated against such for the same offense. As we have already discussed according to the criminal procedure code no two cases at the same time as parallel can be trialed against any person as per law and in the interest of justice. However, the criminal procedure code prohibits parallel trials for the same offense against an individual.

Double Jeopardy Verses Fir and Complaint

If the same offense or cause is involved, then there are two ways to initiate or take legal action against such individual or offender. One is filing an FIR (FIRST INFORMATION REPORT) or lodging a complaint. If both the FIR and complaints are filed against the offender simultaneously for the same offense or same cause, the challan against the offender will be drawn up. Before lodging the FIR, complaint must be resolved.

In case scenario where an offense has been committed, where both FIR and complaint have been filed against the individual, it is necessary to first file a complaint in accordance with the case law, followed by lodging an FIR against the offender. If the complaint results in acquittal against

⁶ Hashmi, M. A. I., Ullah, H., Ahmad, I., & Tabassam, M. A. "A Comparative Study of Fundamental Rights of the Accused in Police Custody: A Study of Pakistan." *Harf-o-Sukhan* 5, no. 4 (2021): 149-180.

the offender but an FIR has also been lodged against the same person in response to the same offense then such person will not be acquitted. This does raise a question of whether the case would proceed to the trial or not. An answer to that lies in the case law of 1999, PCRLJ 181, where a complaint was filed and the applicant was acquitted. This resulted in the issuance of the complaint and, according to them, the offender was also acquitted in a similar manner in the case of an FIR. Therefore, it further comes to the conclusion that the person will be acquitted and no trial will be initiated against them. This is because the complaint which is the primary resource for the trial, has already considered them acquitted. The purpose of this provision is to ensure that no person shall be punished twice for the same offense.

Double Jeopardy Verses Acquittal and Conviction

If a person is acquitted based on a complaint, no case will be tried against them on the base of the FIR. These provisions are taken from PCRLJ 181, where a complaint was filed against the offender along with the lodging of the FIR. As a result, the person has been acquitted based on the complaint, and looking at section 249-A, the trial will not continue based on the FIR before the framing of charges.

Similarly in line with Section 203, if an appeal gets dismissed, it should be regarded as a dismissal but not as an acquittal. It is also necessary to understand the significant distinction between acquittal and conviction. A person once acquitted in a complaint must also be considered acquitted in the FIR. As per the Law consequently, there will be no need for any further trial in such a matter. A person when once acquitted or convicted, will not be retried for the same offense

7

Concept of Double Jeopardy In light of Pcrjl-453 (2002)

(Res-Judicata)

An interesting and legitimate case law in 2002 PCRLJ 453, therein explains the concept of double jeopardy. The case involves two co-accused individuals, A and B, A is acquitted while B is convicted. Therefore, this completely is in line with the principle *Nemodabit, dis vex am*, that a person cannot be vexed twice for the same cause or offense as well and no other case can be tried for the same offense.

During the appeal process, the appellate court remanded the case back to the lower court for further trial. There arose the question of whether a case can be remanded during an appeal. According to the provisions as per the law, the lower court has the power to issue orders for remand based on their requirements but must be with the findings of the law. As a result, both A and B were retried, where B who had filed an appeal, had the entire case remanded. This case now acts as a reference for the concept of double jeopardy, demonstrating that even if an individual accused is acquitted, the other one can still be convicted if an appeal is made and the case is remanded back for retrial i.e. 2002 PCRLJ PLD 403, the accused A was acquitted, but on the other hand the co-accused B was convicted because the case was filed and he made an appeal due to which the case was again submitted to the same court for retrial.

⁷ Saleem, Saqiba, Dr. Muhammad Ashfaq, and Sajid Saleem Ashraf. 2023. "Rights of Accused in Criminal Investigation in Pakistan." *Zenodo (CERN European Organization for Nuclear Research)*, April. <https://doi.org/10.5281/zenodo.7913322>.

The defendant has once again submitted an appeal for a retrial, despite the opposing party being unprepared and filing a lawsuit claiming that they have already been acquitted and are not obligated to appear in court for this case. Furthermore, they argue that the court order is unlawful and all relevant legal provisions have already been addressed. It is regarded as unlawful to summon an individual who has already been acquitted by the same court, as they have already been cleared of the charges. This argument is based on the assertion that once an individual has been acquitted, they cannot be called back to court or have the case retried for the same offense.⁸

Violation of Two Laws

(PLD 2003 Karachi 97) Is a legal precedent that establishes the possibility of conducting two trials when the scope of the two laws involved are different. For example, if a person is found guilty of smuggling drugs, which is an illegal act, here two laws will be applicable. The first one is the Customs Act, and the second one is the Narcotics Act. In this scenario, since the accused has violated two laws, it is permissible to initiate two trials. In accordance with case law 2000 (PCRLJ 3204) trying an accused twice for the same offense is prohibited as given by Section 403 of the General Clause Act 26 relating to double jeopardy and an important Article 13 of the constitution of the Islamic Republic of Pakistan, stating that *the facts are same but the laws are different therefore here the trial may be initiated against the offender*.

As per the General Principle of double jeopardy, a person declared to be acquitted or convicted cannot be retried again on the same facts. It must be to the point of understanding that cases involving the same offense will be barred from further trial. However, those having differences will not be barred and can proceed to further trial.⁹

Section 403 of the Criminal Procedure Code

The criminal procedure code figures out certain conditions in section 403 that shed light on the concept of double jeopardy as per the law.

A person who has once been tried by a Court of competent jurisdiction for an offense and convicted or acquitted of such offense shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offense, nor on the same facts for any other offense for which a different charge ... (Cr P C)

Trial

One prerequisite is that the trial must have already been concluded in order to proceed with the double jeopardy principle and guarantee the safeguarding of double jeopardy. Once the trial has been finalized by the appropriate and competent court, any subsequent trial on the same grounds and in the same case cannot take place (Cr P C).

Competent Court

The completion of a trial is contingent upon the competence and jurisdictional powers of the court overseeing it. If the court is deemed incompetent, the trial may be subject to retrial in order to

⁸ Saleem, Saqiba, Dr. Muhammad Ashfaq, and Sajid Saleem Ashraf. 2023. "Rights of Accused in Criminal Investigation in Pakistan." *Zenodo (CERN European Organization for Nuclear Research)*, April. <https://doi.org/10.5281/zenodo.7913322>.

⁹ Hashmi, M. A. I., Ullah, H., Ahmad, I., & Tabassam, M. A. "A Comparative Study of Fundamental Rights of the Accused in Police Custody: A Study of Pakistan." *Harf-o-Sukhan* 5, no. 4 (2021): 149-180.

rectify the lack of jurisdiction. This indicates that the initial trial was conducted by an incompetent court, despite the existence of provisions regarding double jeopardy in the criminal procedure code. Consequently, a retrial becomes necessary due to the court's incompetency. Two principles pertaining to double jeopardy will be enforced in this process (Cr P C).

Acquittal or Conviction of Accused

It is the third provision of section 403 of the criminal procedure code stipulating that the accused individual must either be acquitted or convicted, triggering out that the double jeopardy legal principle will be applied in favor of or against such accused. Once the acquittal or conviction is finalized then it will be assumed that all the proceedings have been stopped, meeting the third condition for double jeopardy. It is pointed out that both conviction and acquittal will remain in force, there are many offenses in which we can make the alternate charges like misappropriation of property and theft and there could be huge differences among them if the same faction.¹⁰

There are some exceptions of section 403 which are mentioned below; -

Distinct Offence

In the event that one offense has already been committed, and it is distinct from another offense with clear differences between them, a separate charge can be brought forth for the distinct offense. This separate charge is constituted by any act that has led to the consequences of the distinct offense.

Later Consequences

It has been pointed out that if the consequences emerge at a later time, then the offender may face trial, for instance, a case of robbery was brought and trialed by the competent magistrate, subsequently after that, it was revealed that the crime committed was actually dacoity, as we can see that the facts are the same for both robbery and dacoity, but there is a significant issue arises regarding the jurisdiction of the Magistrate to preside over the case and it was not under the jurisdiction of the magistrate when the dacoity crime was found during the proceedings, the Principle of double jeopardy exception will automatically be revoked as we have already discussed above that according to the criminal procedure code section 403 the court must be competent and must have had the jurisdiction. If the accused has been discharged then it is not acquittal as there is a huge difference per law between acquittal and discharge. As acquittal relates to the sections 249-A, 245, 247,248,265 K, of the constitution wherein double jeopardy and the acquittal word were being used.

Consideration of Double Jeopardy Laws in the Manners of the Continental System

Introduction

Indian laws have not mentioned the explicit concept of double jeopardy; however, it has a very important, concise, and elaborative overview of the laws, their methods, and concepts surrounding double jeopardy. The Indian constitution, specifically Article 20 sub-clause (2), addresses retrospective methods and clearly demonstrates that no individual shall be punished twice for the same offenses or a retrial in any manner. Similarly, Section 300 of the criminal procedure code

¹⁰ Sotheara, Y. 2021. *Right to Fair and Effective Investigation in Pre-Trial: A Comparative Study of Pakistan and Indian Criminal Justice Systems*. Doctoral dissertation, University of Delhi, Delhi.

further elaborates on the concepts of double jeopardy, and sketches case law references to illustrate and further clarify the methods. Additionally, the General Clause Act 1897 Section 26, outlines the concept of double jeopardy in Pakistan law, referencing relevant cases in explaining the methods in detail.¹¹ Double Jeopardy Concepts through different case laws;

The concept of the "*Autrefois acquit as well as the autrefois convict*" clearly evaluates the methods of double jeopardy. In this legal maxim we can clearly examine that no person can be punished twice or the trial of such a person can be retrial again who has been acquitted or convicted based on the same moral grounds because it is against the law and it is the legal and constitutional right of the offender that no trial shall be started again while in the same court's jurisdiction, and double punishment in the same offense and on the same person shall not be applicable. The principle of double jeopardy comes into play and is applicable to the person who has been found guilty in this matter and on such grounds in this matter.¹²

Constitution of India Article 20 clause (1)

In accordance with The Indian Constitution as per Article 20, Clause (1), clearly states that no individual can be tried or no one can face trial for the same offense more than once. However, it is of much importance to note that if new shreds of evidence emerge during the course of trial e.g., in a theft case it is discovered that the accused is also responsible for the murder, such person can be punished strictly in accordance with the law. This situation doesn't deal with or fall under the concept of double jeopardy and is not entitled to protection against being tried again for the same crime. The presence of new facts and pieces of evidence allows for a review petition of the case. Additionally, Article 29 sub-clause 3 also makes sure that no accused individual can be coerced or forced to provide a witness statement against themselves during the trial process.¹³

As we know in the Criminal Procedure Code section 164 related to the confession, here the person confesses willingly with a sound mind, that he himself has committed the offense in front of the judicial magistrate, during this recording of confessional statement in the court of law at such no any person will be available except the judicial magistrate, even the police will not be there. In this section he should not be compelled to accept the offense, it is totally voluntary. The offender's confessional statement includes key details and willingness such as undue influence, and promises. The presence of law enforcement is made in accordance with the rules and regulations laid down by the governing confessional statements. So according to section 164 of the criminal procedure code, it is totally based upon the willingness of the offender to be liable or not or whether he voluntarily wants to record the statement regarding confession or not. Then in this situation, the confessional statement will be recorded in accordance with the voluntary willingness of the offender. Similarly, article 20 sub-clause 2 clearly and apparently emphasizes the double jeopardy term that no person shall be prosecuted nor will be punished twice as it is the constitutional right of the offender, similarly if any person is involved in more than one crime falling under different laws having different punishments, here in such case, he will be liable and

¹¹ Roy, C. 2015. "Protection against Double Jeopardy in India-A Critical Analysis." *Indian Journal of Law and Justice* 6: 196. <https://ir.nbu.ac.in/bitstreams/15ebb1fc-fda6-41aa-b5ff-133d21c95875/download>.

¹² *Nichols v. United States*, 511 U.S. 738, 114 S. Ct. 1921, 128 L. Ed. 2d 745 (1994).

¹³ Roy, C. 2015. "Protection against Double Jeopardy in India-A Critical Analysis." *Indian Journal of Law and Justice* 6: 196. <https://ir.nbu.ac.in/bitstreams/15ebb1fc-fda6-41aa-b5ff-133d21c95875/download>.

will be prosecuted accordingly and will not be subject to the protection of Double jeopardy as guaranteed by the constitution.¹⁴

Indian Criminal Procedure Code 300

According to the aforementioned section of the criminal procedure code, an offender or an individual who has been convicted or acquitted of an offense by a competent court is protected from undergoing a repeated trial. Once a case has been decided by the competent court, it cannot be retried in a court of law. This particular section of the Indian Procedure Code holds significant importance as it relates to the concept of double jeopardy. The use of the terms "acquitted" or "convicted" in relation to the same offense highlights the significance of this section. As long as the acquittal or conviction remains in force, no trial will be initiated again based on the same facts, offense, location, or individual involved. The completion of the trial, as outlined in section 379, is a crucial factor. Additionally, section 411 provides further explanation of the concept of double jeopardy. If the trial has been completed under section 379 and the individual is subsequently charged under section 411 for the same facts and offense, the case will not proceed. The individual will neither be prosecuted nor held liable for both section 379 and 411, as the trial has already been completed. Under no circumstances will there be a further trial for the same offense and facts¹⁵

Under Section 221 of the Indian Criminal Procedure Code

In accordance with the Indian constitution, Section 221 of the criminal procedure code addresses the issue of conducting multiple trials on an individual simultaneously in a single transaction. This provision does allow, upon the consent of the state government, the initiation of another trial if a person has already been charged and convicted for a specific offense. But it must be kept in mind that the permission from state government is required to proceed with the trial for the additional offenses committed by the offender. Particularly when there is evidence suggesting the offender's involvement in the crime. For example, if a person commits certain offenses at the same time likewise breaking into the house, committing murder, robbery, stealing the car, and causing an accident before successfully escaping, here each offense is entitled to a separate trial. Therefore, here even if the murder trial is concluded, upon the consent from the state government subsequent trials are initiated relating to distinct offenses he committed at the time. It is here given to the effect that by doing such nature offenses the person, the offender is not entitled to the protection of double jeopardy and must be treated in accordance with the offenses he is guilty of.¹⁶

Section 300 of the Criminal Procedure Code Subsection (3)

Section 300 of the code of criminal procedure, sub-clause (3), states that if a person has been convicted of an illegal or criminal act and he also subsequently faces charges for a different offense that occurred after the initial conviction, it will be presumed that the court was unaware of the new offense at the time of the initial conviction. Therefore, the person can be tried and convicted for the new offense based on these grounds which came later to the court's knowledge. This situation deviates from the principle of double jeopardy, which requires that the facts remain the same for

¹⁴ Acharya, A. S. "Doctrine of Double Jeopardy and Its Applications." Accessed [date]. <https://acharyalegal.com/wp-content/uploads/2020/10/Doctrine-of-Double-Jeopardy-and-Its-Applications.pdf>.

¹⁵ S., Nishanth Gowda. 2019. "Double Jeopardy." *Supremo Amicus* 14: 173.

¹⁶ Guha, S. K. "Thy Cause Shall Not Be Heard Twice: Exploring the Doctrines of Res Judicata and Double Jeopardy, the Counterparts in Civil and Criminal Laws in India." [Publisher and publication date if known].

the same offense. In this case or the scenario discussed above, here both the offense and the facts have changed, resulting in a shift in the understanding and application of the double jeopardy principle. Accordingly, the offender will lose the protection of double jeopardy, even though they have a constitutional right to protection against retrospective punishment. This loss of protection occurs regardless of whether the person is prosecuted, acquitted, or completes the trial in a competent court (BCN 2023).

As per section 300, sub-clauses 3 of the criminal procedure code of India, the trial against the offender may be restarted due to the changing facts. Moving on to section 300, sub-clause 4, it is evident that if a person has committed a crime and the trial for such an offense has been completed, then it is very important to note that the court that completed the trial may not have the jurisdictional competence to proceed or retry the case. For instance, if an offender is tried for theft by a second-class magistrate, but it is later discovered through reliable sources that the magistrate is not competent and the offense should actually be considered as robbery, the Second-class magistrate or magistrate would be deemed incompetent to trial the case of robbery. Therefore, due to the incompetence of the second-class magistrate, the case may be restarted and a retrial can be initiated. Section 300, sub-section 5 of the (Cr P C) states that if a person has been discharged according to section 258 of the criminal procedure code of India, there may be some confusion regarding the possibility of restarting the trial. It is important to elucidate that there is a significant difference between acquittal and discharge. While a retrial cannot be initiated in case of acquittal or conviction, therefore it is necessary to understand that discharge is distinct from acquittal, as stated in section 258 of the criminal procedure code (BCN 2023).

Section 300 of the criminal procedure code, specifically subsection 6, clarifies that it does not come in conflict with Section 26 of the General Clauses Act 1897 or Section 188 of the criminal procedure code of India. Similarly, Section 188 of the criminal procedure code of India addresses a very important and significant aspect. If an individual commits an offense in a foreign country and undergoes trial, whether resulting in acquittal or conviction and subsequently faces charges or punishment in that foreign country, the same offense and charges will also be tried in India if the individual holds Indian nationality. Similarly, if the individual holds Pakistani nationality, the case will be tried in Pakistan under Section 188 of the criminal procedure code, and if from India then he will be dealt with in accordance with the Indian Penal Code (IPC) or the Pakistan Penal Code (PPC) respectively.¹⁷

Therefore, here in this scenario, it is reasonable to assume that the individual in question will not be protected by double jeopardy or he will not have the protection of this principle. This is due to the fact that the offense was committed in a foreign country, and the individual has also violated immigration terms, local laws, or international laws. Consequently, the case will be retried in the individual's home country in accordance with their own domestic laws, and this retrial will not be considered double jeopardy. As a result, Section 188 of the Criminal Procedure Code and Section 26 of the General Clauses Act 1897 will not be impacted.¹⁸

General Clauses Act 1897

Section 26 of the aforementioned act 1897 which is related to the concepts of double jeopardy

¹⁷ Pillai, K. C. (1988). *Double Jeopardy Protection: A Comparative Overview*.

¹⁸ Riley, A. R., and S. G. Thompson. 2022. "Mapping Dual Sovereignty and Double Jeopardy in Indian Country Crimes." *Columbia Law Review* 122: 1899. <https://columbialawreview.org/content/mapping-dual-sovereignty-and-double-jeopardy-in-indian-country-crimes/>.

states that "commission, as well as the omission, are both kind of the offenses as they are mentioned in the act then we can see that if any omission or commission are done but on different places then the trial shall not be trialed twice or separately, the trial will be started conclusively, for example, there is a domestic violence act available in the law under section 498-A, which is an offense and this offense is also available in the criminal procedure code, then upon such violation from the offender the case will not be trialed separately, the case will be trialed conclusively. Although its availability is in both acts the punishments will not be given to the offender subject to both acts. He shall be punished just for one and should be subject to only one act. Section 26 of the General Clause Act 1897 states that there are two concepts of double jeopardy, first is the Autrefois Acquit and the second one is the Autrefois convict. As these terms are mentioned in the English countries they believed that no person shall once trialed, be retrialed in case of acquittal or conviction in the same offense. But on the other hand, if we peruse article 20 subclause 2 of the Indian Constitution states that a person shall not be convicted repeatedly. Section 300 of the criminal procedure is vital and substantial which recovers all the aspects and perspectives as "Autrefois Acquit, of the double jeopardy and pointed out that this article shall not fall under that of article 20 (2) of the criminal procedure code. So, at the start of this term, we can see that a person who is once convicted or acquitted cannot be retrial again (BC, N. 2023).¹⁹

Autrefois Convict and Autrefois Convict

Upon examining the Autrefois Convict term and its counterpart, the "Autrefois Convict" term, it becomes apparent that both Article 20 (2) of the Indian Constitution and the Pakistan Constitution state that an individual or an offender must not be convicted or prosecuted twice for the same offense if they have already been acquitted or convicted by a competent authority or court. The case law of the "Kolla Veera Raghav case" is very much worthy in this aspect, as it raises questions about section 300 (1) of the Criminal Procedure Code and whether it is applicable or not. If there is a conflict between the two, it does not necessarily constitute a violation of article 20 subclause (2). Legal scholars often view such conflicts as infringements on Fundamental Rights and it is very important to note that section 300 sub-section 1 of the criminal procedure code does not amount to an infringement of Fundamental Rights. Additionally, section 300 (2) of the criminal procedure code does not address the concept of double jeopardy, indicating that there is no violation in this regard. Therefore, it is crucial to clarify any ambiguity surrounding this issue.²⁰

Retrial in the same offence under the Negotiable Instrument Act

As per section 138 of the Negotiable Instrument Act in India, it is stated that an offender or an individual cannot be punished repeatedly for the same offense or cause once acquitted or convicted for such violation. This section clearly drafts the concept of double jeopardy, as established in the case of "Sangitabehn Mahendrabhai Patel Versus the State of Gujrat and Anr." This particular case, which is well-known in the context of the Negotiable Instrument Act, illustrates how Sangitabehn Mohendrabhai Patel approached a bank for a loan. She obtained the loan from the bank under the specified terms and conditions, agreeing to repay the amount in installments within a specified period. However, she failed to make the installment payments and later issued a check

¹⁹ BC, N. "Rule Against Double Jeopardy—A Comparative Study." *Indian Journal of Law & Social Legal Research* 5, no. 1 (2023): 1.

²⁰ Ali, Sardar Hamza. "An Analytical Study of Criminal Justice System of Pakistan (with Special Reference to the Province of Punjab)." *Journal of Political Studies* 22, no. 01 (2015): 17-42. <https://jps.pu.edu.pk/6/article/view/284>.

to the bank, which was dishonored. Consequently, this case was treated as a criminal matter to clarify the principles of double jeopardy. Although this case is related to a banking transaction, which is typically considered a civil matter, it serves as a means to understand the provisions of the Negotiable Instrument Act regarding double jeopardy.²¹ After the check was found to be disordered, the State filed a complaint with the magisterial court. The defendant was summoned by the magistrate and, following the completion of the trial, Miss Sangeetaben Mahendrabhai Patel was fined. However, she appealed the decision to the Session Court for revision. Surprisingly, the Session Court acquitted Miss Sangeetaben Mahindra Patel. Nevertheless, she decided to file an appeal against the defendant with the High Court. Meanwhile, the State Bank of Gujarat lodged an FIR against Miss Sangeetaben Mahindra Patel under sections 406, 420, and 114 of the Indian Penal Code. In order to dismiss the FIR based on Section 482 of the criminal procedure code, Miss Sangeetaben Mahindra Patel approached the High Court. The High Court made a significant observation that the trial for the same offense, at the same location, with the same facts, and against the same person had already been completed in the Magisterial court. This was deemed a violation of Article 20, subclause (2) of the Constitution of India, which falls under the concept of Double Jeopardy. Consequently, the High Court quashed the FIR and the case, stating that the trial had already been concluded.

Moreover, the State Bank of Gujrat has filed an appeal to the Supreme Court of India for review purposes and here the Supreme Court of India has raised a question from the State Bank of Gujrat on which grounds you are not ready to accept the remarks of the High Court and why you have refused to accept the decision of the High Court then the State Bank of Gujrat stated and submit the arguments that she has taken the loan from the bank, but she has not submitted the installments and the check she has provided has also been disordered, so here it is pointed out that the concept of the double jeopardy does not rely upon this because the FIR which has been lodged against the defendant under section 406, 420 and 114 of the Indian Penal Code is a separate matter because she has given the disorder cheque, she made fraud with the State property and State Bank of Gujrat. Therefore, this term does not fall under double jeopardy, after a long perusal and a vital discussion with the parties the court reached the decision, that this case "does not rely upon the double jeopardy concepts, and the order passed by the High Court was dismissed by the Supreme Court of Pakistan"

A Comparative Analysis Of Pakistan And India's Attachment On The Jeopardy Disputes

Introduction

The concept of double jeopardy and its associated rules are based on different rationales and have origins that can be traced back to the completion of trial procedures. As we have previously discussed in earlier Sections, it is the legal right of the offender. In the following sections, we will compare this rule with the principles and laws of India, where individuals cannot be tried twice. The Indian jeopardy rules have ancient origins and are rooted in the traditional methods of dealing with criminal matters. On the other hand, if we examine the contemporary methods of double jeopardy, we can observe that they have evolved over time. In the modern era, these methods are considered to be effective and have been influenced by various sources. One such influential figure is the Greek statesman Demosthenes, who played a significant role in shaping the early stages of double jeopardy methods. It can be traced back to 355 BC when methods and disputes existed, and in order to control such crimes, rules, and rights regarding double or repeated punishments were

²¹ Pillai, K. C. (1988). *Double Jeopardy Protection: A Comparative Overview*.

established to protect offenders or accused individuals. If we shed some light on the Roman law pertaining to the concept of double jeopardy, we can observe that the doctrine of *res judicata*, also known as the common law in the United Kingdom, played a significant role. In the 19th Century, these rules were upheld, but the concept of double jeopardy posed a paradoxical challenge due to the scarcity of laws to enforce it. It necessitates greater awareness and control of criminal procedures. Not only in Pakistan but also in India, there are numerous institutions that deal with criminal law. In this crucial analysis, we are discussing the importance of understanding the *raison d'être* for the exercise of arbitration laws and rules, which serve as a powerful tool for individuality. Over time, the number of repeated cases has multiplied, and the referenced case laws can be found in the PCRLJ Pakistan laws of 2008. This matter is subject to evaluation in order to comprehend the concepts of double jeopardy under the state's jurisdiction²².

Supreme Court of India about Double Jeopardy

The Supreme Court of India has recently made a decision regarding the application of the double jeopardy rule to individuals who have already served their sentence for a crime they were convicted of. It has been clarified that while the plea of *autrefois* is not constitutionally recognized in relation to double jeopardy laws in India, the plea of the former is acceptable under ordinary laws in the country. This ensures that individuals are protected from being tried for the same offense multiple times, in line with the principles of justice and fairness. The court's decision reflects a balance between upholding the rule of law and providing necessary protections to individuals under the constitution of India.²³

With this revision, a significant difference arises between the Indian laws, specifically the Criminal Procedure Code, and other laws maintained in the state of India. While the former evaluates and enforces the criminal procedure code with the formation of acquittal, the accused individual is discharged until the laws are fully upheld. This is crucial in protecting the accused from double jeopardy. It is important to note that an acquittal does not necessarily imply a focus on the facts of the case. The criminal trial proceedings will continue based on factual findings. Although acquittal is not terminable, termination is possible under certain conditions outlined below. These conditions are essential in determining the innocence of the accused individual. The grounds are mentioned below in which the terminations are permissible and can be possible and in which an accused person can qualify for the termination of proceedings.²⁴

- If a complaint is filed by a complainant who is found to be absent during the proceedings, causing delays and wasting time, the judicial magistrate may decide to terminate the trial.
- The second ground is that the termination can be possible when the complainant has filed and made a request to withdraw the complaint at his own request.
- In this legal term if we talk about the withdrawal which has obviously been made by the public prosecutor and the public prosecutor it is necessary that the charges must be framed in this regard.
- We have now reached a point where the termination can be concluded, pending the conditions set by the Judicial magistrate. Despite numerous summonses sent to the

²² Hashmi, M. A. I., Ullah, H., Ahmad, I., & Tabassam, M. A. "A Comparative Study of Fundamental Rights of the Accused in Police Custody: A Study of Pakistan." *Harf-o-Sukhan* 5, no. 4 (2021): 149-180.

²³ Roy, C. 2015. "Protection against Double Jeopardy in India-A Critical Analysis." *Indian Journal of Law and Justice* 6: 196. <https://ir.nbu.ac.in/bitstreams/15ebb1fc-fda6-41aa-b5ff-133d21c95875/download>.

²⁴ Guha, S. K. "Thy Cause Shall Not Be Heard Twice: Exploring the Doctrines of *Res Judicata* and Double Jeopardy, the Counterparts in Civil and Criminal Laws in India." [Publisher and publication date if known].

complainant either by registered mail or through an official representative, there has been no response. The complainant has failed to appear before the court or the judicial magistrate, giving the magistrate the authority to terminate the proceedings due to non-appearance and willful truancy, supported by evidence.²⁵

Indian and Pakistan Double Jeopardy Comparisons

Article 20 of the Indian constitution focuses on safeguarding individuals against certain offenses. This article, akin to Article 19 which guarantees freedom of speech, expression, and movement, outlines specific protections. The three sub-articles or clauses within Article 20 are as follows:

Indian Constitutional Double Jeopardy and Retrospective Punishments

Article 20 (1) deals with the protection conviction from the offences. There are three protections available in this regard, for example in 21 article deals with retrospective punishment, for example, if any person has committed an offense and has been considered to be an accused and has been sentenced for a specific period (punishment) like imprisonment, etc. and subsequently the punishment has been effectively increased on the same offense then the accused who has already been punished shall not be punished retrospectively and as per article 21 of the constitution of India he has the right not to be punished as the punishment in the current circumstances has been increased. So, it is sub-clause 1 of article 20, this law is also considered as *an ex post facto law*, the ex post facto law protects from the retrospective laws particularly in the criminal charges or in the conviction charges. The case "Ratan La Vs. State of Punjab" deals with retrospective punishment and in this case, it was mentioned that you can give retrospective punishment when you are accused and it is going to be in favor of the accused person. The retrospective may be awarded to such a person in case of benefit or in favor of the accused person, but ultimately in case of increasing the punishments; it cannot be applicable to the accused. In another case "Mohan Lal Vs. the State of Pakistan", it was decided that only in case of conviction through ex post facto laws the protection be awarded to such a person, if some procedural changes have occurred then the procedures may be adopted for further trial purpose e.g. collection of pieces of evidence purposes, to call or to ensure the procedure to call upon any person, the procedures may be changed and shall be applicable in this regard, but in case of conviction of punishment will not be applicable.²⁶

Constitutional Value of Double Jeopardy

Article 20 (2) of the Constitution of India which relates to the double jeopardy and in this article the term the double jeopardy seems to be considered to further explanation of this article 20 sub clause 2 which is very necessary and important article clause as this term is defined in the constitution as the "*Latin term Nemo, debet' bis vexari*", and in this Latin term the word vexed means the punishment, eventually all the methods of the double jeopardy has been taken from this Latin term, this term is considered to be very ancient term and the concept of the double jeopardy is also have the importance an ancient concept e.g double jeopardy as no any person shall be twice punished neither he has been prosecuted actually for the grounds or facts of crime while he is punishing and facing all the facts and punishments due to the offences as he has been committed by him, this is the constitutional right of the offender, ultimately it can be happened due to the scarcity of the awareness, but as per law and accordance with the law in the interest of public when

²⁵ Pillai, K. C. (1988). *Double Jeopardy Protection: A Comparative Overview*.

²⁶ Akpan, G. G. *Punishment - A Drive for Justice*. 2023.

the order or decision has been passed by the competent court then it can be presumed that no any objection of proof will be enough against the article 20 of the constitution of India with sub clause (ii) as passed by the competent authority. The competent authority can be the Honorable courts as well as the other powers having the judicial powers authorized by the government of India. So, in short, it may be said that in the same offense or on the same grounds as committed by him, no accused person can be punished twice neither the punishment can be extended either passed by the honorable court nor can be prosecuted (Ali, 2015).

To evaluate further, there are some essentials related to this article e.g., double jeopardy of the constitution of India which are mentioned below;

- The first essential is that as per law it is necessary that the person must be accused and he must be convicted in a crime by the competent authority.
- The second essential is that of the double jeopardy related to the article 20 sub clause 2 with the orientation of this clause with essentials that the trial of the court or the procedural process according to the law like to be the criminal procedure code and the punishment has already been imposed as per the penal code to such person and the prosecution has also been completed the trial as per accordance with law and to fulfill the requirements they have been appeared till the completion of the court proceedings in terms of the judicial tribunal through resources e.g. a case of “Maqbool Hussain Versus State of Bombay, 1953”, in this case Mr. Maqbool Hussain in the court stated that and his prosecutor has also stated that in case of gold all the proceedings have already been completed and the inquires of the customs police have already been completed and he further claimed that this trial is considered to be the double jeopardy and due to which this is going to be the double jeopardy and is the unconstitutionally of rights, then the court stated that the completion of the inquiries, investigations by the custom police and the other non-judicial authorities are not have the judicial powers, the honorable court Judicial courts have the powers as well as the Judicial tribunals have the powers to complete the trial, however the other trials, investigations, inquiries are not the part of the judicial court or tribunal court so that the claim made by the Maqbool Hussain is being refused by the court with the comments and remarks of the honorable court of that the trial or proceedings which have been prosecuted in the Hon’ble court is considered and if the trial is restarted then the term double jeopardy shall be fall on such grounds.
- The third essential is that when the previous proceedings have been done then it will be presumed that the punishment must be given to the offender because he has committed the offense, the honorable court convicted and prosecuted such a person for any offense it is necessary and is the important essential of the article 20 with sub-clause 2 of the Indian constitution that to trial the case and too liable the term of the double jeopardy the punishment must be done as imposed by the honorable court. Despite he shall not be acquitted of the offense by the judicial court according to the criminal procedure code. The accused person must be vexed (punished) the first time.
- The fourth essential is very important which deals with that the offender must be punished as well as he must be prosecuted for the same offense, for example, if a person has committed any crime then it will be presumed that the facts and the grounds are fixed and vexed as we have already discussed in the above Latin term so that in the same offense or ground of punishment the offense must be same that is why the double jeopardy will be imposed upon him, then after imposition of the punishment by the honorable court as a judicial court once

has imposed a punishment then, on the other hand, the grounds and the facts of the offender at the time of the offense will be perused apparently so that the *raison dieter* double jeopardy constitutional rights will be apparently dynamics.

- According to this principle and as per requirements to fulfill the judicial procedure as per the code of criminal procedure the pieces of evidence may be collected as well as the witnesses' shreds of evidence must be recorded in accordance with the law.²⁷

Indian (C r P C) Attachment of Jeopardy

In accordance with the criminal procedure code, the principle of double jeopardy states that an individual cannot be punished twice for the same offense if they have already been convicted or acquitted. This protection is provided by the judicial court of the Indian government. Section 128 of the Indian criminal procedure code allows an accused person who has been acquitted or convicted by a judicial tribunal or court to claim the protection of double jeopardy. This protection is also guaranteed under Article 20, subclause 2 of the Indian constitution, as mentioned earlier. However, it is important to note that the jurisdiction in which the trial is being conducted must have the authority to provide this protection under section 129 of the Indian criminal procedure code. The criminal procedure code of India, specifically section 129, addresses the issue of jurisdiction. It is important to note that the court's jurisdiction must be correctly established, as any errors in jurisdiction could render the proceedings null and void. This could potentially impact the ability to successfully raise double jeopardy protection, especially in cases where the same offenses and facts are involved²⁸

Conclusion

In conclusion, the comparison of laws in different stages reveals that double jeopardy protection, which is a constitutional right of the offender, is ensured in both Pakistan and India. The General Clauses Act 1897, specifically Section 26, establishes the same concepts of double jeopardy. Similarly, the criminal procedure codes have different section codes but maintain the same concepts. However, there are slight constitutional differences between the two countries. In the Constitution of the Islamic Republic of Pakistan, 1973, Article 13 addresses double jeopardy, while in the constitution of India, Article 20 and Section 20 subclause (2) deal with the same concept. Hence, there exists a minor distinction between them. The 1999 edition of PCRLJ of 181 contains references to various case laws that are cited in different cases. It is important to note that the Indian case law *Kolla Veera Raghav* is significant in explaining the double jeopardy protection for offenders. Additionally, the case of *Mr. Maqbool Hussain Versus the Government of India* is also of great importance. In this case, the customs police tried the case separately from the government and charged Maqbool Hussain accordingly. Maqbool Hussain appealed to the competent court for protection against double jeopardy. The court acknowledged that the custom police proceedings were separate and departmental, and therefore, the trial by the competent jurisdictional court would not be considered a retrial. However, if the competent court completes the trial and subsequently restarts the trial on the same facts, same offense, and same person, it

²⁷ Kethineni, Sessa, and Tricia Klosky. 2005. "Juvenile Justice and Due Process Rights of Children in India and the United States." *International Criminal Justice Review* 15 (2): 131–46. <https://doi.org/10.1177/1057567705283955>.

²⁸ Srinivasan, R. 2020. "Procedure Established by Law, Right to Privacy and Investigative Powers of State: An Appraisal." *Electronic Journal of Social and Strategic Studies* 1: 187–214. https://www.ejsss.net.in/uploads/172/8894_pdf.pdf.

would then be considered a retrial. Similarly, in accordance with the Civil Procedure Code 1908, section 11 deals with the concept of Res judicata, which also applies to the double jeopardy principle. Additionally, the General Clause Act section 26 addresses double jeopardy, as it is a general law applicable in both Pakistan and India. In India, section 26 of the General Clause Act 1897 is referenced in various cases mentioned in the PLD and PCRLJ. The criminal procedure code, specifically Section 403 in the Criminal Procedure Code of 1898 in Pakistan, and Section 188 in the Criminal Procedure Code of India, addresses the issue of double jeopardy. Lastly, under section 138 of the Indian Negotiable Instrument Act, if an individual with Indian nationality commits a crime or offense in a foreign country and undergoes trial there, upon returning to India, they cannot claim double jeopardy protection. In such a scenario, a retrial will be conducted in India for violating Indian rules and policies.