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# Plea of Autrefois Acquit and Autrefois Convict

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## ABSTRACT

*Fair trial has been regarded as an essential component of justice everywhere. Audi alteram partem, which means “listen to the both sides,” has been considered a fundamental rule of natural justice. With the same objective, Indian Constitution under Article 20(2), in the part of Fundamental Rights as well as the International Covenant on Civil and Political Rights (ICCPR) lay down the provision of fair trial. This convention contains provisions on due process which are an integral part in the safeguarding of fair trial.*

*Section 300 of the Code of Criminal Procedure, 1973 also explicitly lays down the provision pertaining to this rule. Autrefois acquit and autrefois convict is a bar to criminal trial on the ground that the accused person once been charged and tried for the same alleged offence and while such acquittal or conviction is in force cannot be again tried for the same offence. There are various facets of this principle, which have been developed by the judicial interpretation.*

*The author in this article has dealt with the ambit and scope of this principle with respect to the provisions of section 300 of Cr. PC.*

**Keywords:** *crime, trial, offence, fair hearing, conviction, acquittal.*

## I. INTRODUCTION

Webster's New World Law Dictionary defines fair trial as “a trial by a neutral and fair court, conducted so as to accord each party the due process rights required by applicable law; of a criminal trial, that the defendant’s constitutional rights have been respected”<sup>2</sup>.

Fair trial has been regarded as an essential component of justice everywhere. *Audi alteram partem*, which means “listen to the both sides”, has been considered a fundamental rule of natural justice. With the same objective, the International Covenant on Civil and Political Rights (ICCPR) lays down the provision of fair trial<sup>3</sup>. This convention contains provisions on due process which are an integral part in the safeguarding of fair trial. Article 14.3 lays down the minimum rights that are guaranteed to an accused. The provision says that:

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<sup>2</sup> YOURDICTIONERY.COM, <http://www.yourdictionary.com/law/fair-trial> (last visited 16th Apr. 2013).

<sup>3</sup> Articles 14 and 15 of the convention.

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

1. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
2. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
3. To be tried without undue delay;
4. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
5. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
6. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
7. Not to be compelled to testify against himself or to confess guilt.

Article 20 of the Indian Constitution ensures fair trial in India. With the same token, section 300 also acts as a safeguard of the rights emerging from fair trial.

The pleas of *autrefois convict* and *autrefois acquit* prevent twice punishment for an offence, which has been tried and resulted in either acquittal or conviction of the accused. The scheme of the Indian constitution also bars the twice conviction for the same offence, i.e. *double jeopardy*<sup>4</sup>.

## II. COMPONENTS OF FAIR TRIAL

As a human value, it has been universally accepted in every civilized nation that a person accused of any offence should not be punished, without giving him ample opportunity of fair trial and unless his guilt is proved in that trial. Apart from, the provisions in the International Covenant on Civil and Political Rights (ICCPR), Article 10 and 11 of the Universal Declaration of Human Rights also give effect to the concept of fair trial. These articles

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<sup>4</sup> Article 20(2) of Indian Constitution.

provide:

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

In India, courts have recognized that the primary object of the criminal procedure is to ensure a fair trial of the accused persons<sup>5</sup>. The Law Commission has reiterated that the essentials of fair trial relate to the character of the court, the venue, the mode of conducting the trial (particularly trial in public), rights of the accused in relation to defence and other rights<sup>6</sup>. As per the Indian, following are the components of fair trial:

1. **Adversarial System.** The adversarial system emphasises the opportunity to the accused to defend himself. The judge acts like an umpire, who only gives the decision after the hearing. Thus, the adversarial system, like that of India, provides ample opportunity to the prosecution as well as the accused to present their arguments.
2. **Presumption of innocence.** The principle of presumption of the accused, unless his guilt is proved beyond reasonable doubt is of utmost importance as it is the cardinal principle of administration in criminal justice<sup>7</sup>. The burden of proving guilt is upon the prosecution. Unless that burden is discharged, the courts can not hold the accused guilty<sup>8</sup>.
3. **Impartial Judge.** The most indispensable condition for a criminal trial is to have an independent, impartial and competent judge to conduct the trial. The Code provides for separation of the Executive from the Judiciary. In the case of *Kumar Padma Prasad v. Union Of India And Ors.*<sup>9</sup>, it was observed that:

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<sup>5</sup> Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376.

<sup>6</sup> 37<sup>th</sup> Report.

<sup>7</sup> Babu Singh v. State of Punjab, (1964) 1 Cri LJ 566, 572.

<sup>8</sup> Kali Ram v. State of H.P., (1973) 2 SCC 808: 1973 SCC (Cri) 1048, 1059.

<sup>9</sup> 1992 AIR 1213: 1992 SCR (2) 109.

“The independence of judiciary is part of the basic structure of the Constitution. To achieve this objective there has to be separation of judiciary from the executive. The framers of the Constitution did not and could not have meant by a “judicial office” which did not exist independently and the duties or part of the duties of which could be conferred on any person whether trained or not in the administration of justice.

The Directive Principles as enshrined in Article 50 of the Constitution, give a mandate that the State shall take steps to separate the judiciary from the executive which means that there shall be a separate judicial service free from the executive control. Chapters V and VI in part VI of the Constitution provide for the High Courts and subordinate courts in the State. The scheme under the Constitution for establishing an independent judiciary is very clear. The Constitution-scheme, therefore, only permits members of the judicial service as constituted in terms of Article 236(b) of the Constitution to be considered for the post of District judge and that of the High Court Judge”.

Section 479 of the Code recognises this principle. It lays down that:

**479. Cases in which Judge or Magistrate is personally interested.**

No Judge or Magistrate shall, except with the permission of the court to which an appeal lies from his court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

*Explanation.* A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred and made an inquiry in connection with the case.

4. ***Venue of the trial.*** The provisions regarding the venue of the trial are contained in sections 177 to 189. The venue for the trial must be convenient. Only then it will be considered as a part of the fair trial.
5. ***Right to know the accusation.*** Sections 228, 240, 246 and 251 touch upon the provisions that require particulars of offence to be stated to the accused. This is to facilitate the accused in preparing his defence.

**6. Accused to be tried in his presence.** The accused must be present at the time of trial involving his role. For example section 273 requires that the evidence is to be taken in the presence of the accused person.

**7. Right to cross-examine the prosecution witness and to produce evidence in defence.** In *Sukanraj v. State of Rajasthan*<sup>10</sup>, it has been held that the trial which denies the accused person the right to cross-examine the prosecution witness, can not be considered as a fair trial. In the same case it has been observed that:

*“Section 353 Cr. P. C. provides that "except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader." It is urged by learned Deputy government Advocate that the copies were made out in the presence of the accused but in my opinion mere physical presence of the accused is not necessary. He must be given all opportunities to defend himself by testing the veracity of the witness through the process of cross examination. There is nothing on the record to show that opportunity was afforded to the accused to cross-examine the witnesses when the copies of their statements were taken from one case to another”.*

**8. Right to have an expeditious trial.** Justice delayed is justice denied. With the same vies, the Supreme Court of India has accentuated the essence of speedy trial<sup>11</sup>. Section 309(1), in following words provides the direction to the courts to expeditiously continue the trial proceedings:

**309. Power to postpone or adjourn proceedings.**

(1) In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

**9. Reasoned decisions.** On the plainest requirement of justice and fair trial the least that is expected of the trial court is to notice, consider and discuss the evidence of various witnesses as well as the arguments addressed at the bar<sup>12</sup>.

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<sup>10</sup> AIR 1967 Raj 267: 1967 CriLJ 1702.

<sup>11</sup> *Hussainara Khatoon (IV) v. State of Bihar*, (1980) 1 SCC 98, 107.

<sup>12</sup> *Mukhtiar Singh v. State Of Punjab*, 1995 AIR 686: 1995 SCC (1) 760

**10. Doctrine of *autrefois acquit* and *autrefois convict*.** The doctrine of *autrefois convict* and *autrefois acquit* prevent twice punishment for an offence, which has been tried and resulted in either acquittal or conviction of the accused. The scheme of the Indian constitution also bars the twice conviction for the same offence, i.e. *double jeopardy*<sup>13</sup>. Section 300 of the Code touches upon this doctrine.

### III. PLEA OF AUTREFOIS ACQUIT AND AUTREFOIS CONVICT.

It has been noticed that the doctrine of *autrefois convict* and *autrefois acquit* has been considered as an essential attribute of the fair trial. ***Autrefois convict*** is a French word which means ‘previously convicted’. Through this, the defendant claims to have been previously convicted for the same offence and that hence they cannot be tried again. The plea of ***autrefois acquit*** means ‘previously acquitted’ and through this the defendant claims to have been previously acquitted of the same offence and that hence he or she cannot be tried again.

#### ***Objective of the Plea.***

The plea is taken to bar the criminal trial. The ground for raising the plea is that the accused person was already charged and tried for the same alleged offence. Also, the trial resulted in either acquittal or conviction of the accused. These rules are also based upon the principle that “a person can not be tries for the same offence more than once”. The same has been recognized by the Indian constitution as a fundamental right<sup>14</sup>.

#### ***Provision under the Criminal Procedure Code.***

In the Criminal Procedure Code of 1898, 403 dealt with provision, barring second prosecution for same offences. Section 300 of the Criminal Procedure Code, 1973 touches upon the doctrine. It lays down that:

#### **300. Person once convicted or acquitted not to be tried for same offence.**

(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under subsection (2) thereof.

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<sup>13</sup>Article 20(2) of Indian Constitution.

<sup>14</sup> Id.

(2) A person acquitted or convicted of any offence afterwards tried with the consent of one State Government for any distinct offence for which a separate charge has been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the court by which he was discharged or of any other court to which the first-mentioned court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

*Explanation.* The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

This section lays down that the person, once convicted or acquitted can not be tried for the same offence. It has been based on the maxim *nemo debet bis vexari*, which means that a person can not be tried again for an offence which is involved in the offence, with which he was previously charged.

#### **IV. ESSENTIALS OF THE PLEA**

To take the plea of *autrefois convict* and *autrefois acquit*, following conditions must be satisfied:

1. the accused had been tried by a court;
2. the court must be of competent jurisdiction; and
3. He has been acquitted of an offence alleged to have been committed by him or an offence with which he might have been charged under S. 221(1) or convicted of an offence under S. 221(2).

**A. Trial of the accused.** There must be trial of the accused. In other words, the accused must face hearing of the matter in order to arrive at determination on merits. In a summons case, the accused is said to be tried, when he appears and answers to the intimation under S. 251, which takes a place of formal charge. If a case is exclusively triable by the Court of Session, the trial initiates after a charge is framed under S.228. There is no trial before the charge is framed. But before charge is framed, it is only the stage of inquiry.

If the accused has been acquitted or convicted, without a trial S.300(1) is inapplicable<sup>15</sup>.

In *Namasivayam v. State*<sup>16</sup>, M.S. Sayeed J. observed that:

Section 300 CrI.P.C. contemplates that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried once again for the same offence, nor on the same facts for any other offence, for which a different charge from the one made against him might have been made under sub-section (1) of S. 221, or for which he might have been convicted under sub-section (2) thereof. In this case, the matter was not tried nor the petitioner has been convicted or acquitted after trial and hence the applicability of Section 300 CrI.P.C. to the facts of this case does not arise.

Further, an erroneous acquittal order on the ground of lack of jurisdiction is not acquittal for the same objective of S.300<sup>17</sup>. “It is only a court which is Competent to initiate proceedings or to carry them on, that can properly make an order of acquittal which will have the effect of barring a subsequent trial upon the same facts and for the same offence”<sup>18</sup>.

**Acquittal for want of sanction.** If the required sanction for to prosecution was not obtained, the whole trial becomes null and void. The subsequent trial after obtaining a proper sanction is not barred<sup>19</sup>. In *Haridwar Rai v. State of Bihar*<sup>20</sup> Krishna Ballabh Sinhs J. observed that:

“Further the charge under Section 27 of the Arms Act would also fail on technical ground even though there was sufficient evidence to establish that the accused was in possession of a country made pistol with intent to use the same for unlawful purpose and he did use the same for illegal and unlawful purposes of committing murder of Shakuntala Kumari for the simple reason that no previous sanction for prosecution of the accused under Section 27 of the Arms

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<sup>15</sup> *Namasivayam v. State*, 1982 CriLJ 707.

<sup>16</sup> 1982 CriLJ 707.

<sup>17</sup> *Mohd. Shafi v. State of West Bengal*, 1966 AIR 69; 1965 SCR (3) 467.

<sup>18</sup> *Id.*

<sup>19</sup> *Bishambhar Nath Kanaujia vs State Of U.P.*, 1986 CriLJ 1818

<sup>20</sup> 1990 (38) BLJR 1359; 1990 CriLJ 2651. *Nagraj v. State of Mysore*, 1964 AIR 269; 1964 SCR (3) 671.

Act was procured”.

**Trial for offences falling under different statutes.** Section 300 does not apply to cases where there was only one trial for several offences, in which the accused was acquitted, while being convicted for of one. Thus, in *State of Madhya Pradesh v. Veereshwar Rao Agnihotry*<sup>21</sup>, it was held that the offences under S. 409 of the Indian Penal Code and under S. 5(2) of the Prevention of Corruption Act were distinct and separate. Hence, there could be no objection to a trial and conviction under s. 469 even if the accused had been acquitted under S. 5(2). Further, if the accused has been tried under the Indian Penal Code and Arms Act and has been acquitted in the latter case for want of the proper sanction, such acquittal does not bar the prosecution under S.302 IPC, on the same set of facts<sup>22</sup>.

**Withdrawal of the complaint.** If the complainant withdraws the complaint, which results in the acquittal of the accused, the trial of the accused on the fresh complaint for the same offence based on same facts would be barred under S.300<sup>23</sup>. But in a case, where only one injured had filed a complaint and the complaint had been taken on file with regard to offences committed in relation of him only and all the accused were acquitted on the withdrawal of the complaint by the injured person, a fresh prosecution of the accused by the other aggrieved with regard to other offences under section 147 and 323 is not barred<sup>24</sup>.

**Acquittal under S.256.** Even though the acquittal in the first trial was on basis of the absence of the complainant under S.256 and not on the basis of the merits, such acquittal can be the basis of putting a bar on the second trial. The trial under S.300(1) does not necessarily mean trial on merit<sup>25</sup>. If on the death of the complainant, the case is not adjourned but the accused is acquitted, a fresh complaint is not barred under S.300<sup>26</sup>.

In *Harendra and Ors v. Naipal Singh and Anr*<sup>27</sup>, C.A. Rahim, J. said:

*“So I find that the Magistrate did not act judicially in passing the order of acquittal on the death of the complainant when the kidnapped boy, was the other aggrieved person to whom great injustice was done by not allowing him to be substituted or impleaded. In these circumstances I find that the acquittal under Section 256, Cr.P.C. does not allow Section 300, Cr.P.C. to operate and to cause hindrance in filing a second complaint”.*

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<sup>21</sup>1957 AIR 592; 1957 SCR 868.

<sup>22</sup>Kapil Singh v. State of Bihar, MANU/BH/0090/1989

<sup>23</sup>M. Gopalakrishna Naidu, (1952) Nag 52.

<sup>24</sup>Kapu Karianna v. R. Kodappa, 1974 CrLJ 1325 (AP).

<sup>25</sup>Kashigar Ratnagar v. State of Gujarat, 1975 CrLJ 963 (Guj.).

<sup>26</sup>Harendra and Ors v. Naipal Singh and Anr.1996 CriLJ 91.

<sup>27</sup>Id.

Thus, dismissal of complaint under S.256 due to absence of the complainant amounts to the order of acquittal, which bars the fresh complaint in respect of the same. Where the complaint has been dismissed for default and not on merits, the second complaint on the same facts was held not barred<sup>28</sup>.

The accused is considered to have been tried, if the court has taken cognizance of the offence and issued process. In other words, the trial is deemed to have initiated if the proceedings have commenced in the court<sup>29</sup>.

If on the police report, the magistrate has passed the order to discharge the accused, on re-investigation the police can file a fresh charge-sheet against the accused on the same facts<sup>30</sup>.

**B. Competent court.** In order to take the plea under S.300, the acquittal or conviction must be made by a court of competent jurisdiction<sup>31</sup>. A trial by a court not having jurisdiction to try the case is void *ab initio* and the accused, if acquitted, must be re-tried<sup>32</sup>. In *Purnananda Das Gupta and Ors. v Emperor*<sup>33</sup>, the bench at Kolkata high court observed that:

*“It is to be observed that the Section requires that the Court of the first instance should have been competent to try the charge put forward at the second trial. It is quite obvious in the present case that the Court of the Special Magistrate of Faridpore was not competent to try a charge of conspiracy under Section 121-A, I.P.C., and so in consequence Section 403 would have no application at all”.*

The court before which the plea of *autrefois acquit* is taken, must follow the precedents regarding the competency of the court which acquitted the accused. In *Mohammad Safi v. The State of West Bengal*<sup>34</sup>, the bench observed that:

The competence of a court, however, depends not merely on the circumstance that under some law it is entitled to try a case falling in the particular category in which the offence alleged against the accused falls. In addition to this taking cognizance of the offence is also material in this regard. Under the Code of Criminal Procedure a court can take cognizance of an offence only if the conditions requisite for initiation of proceedings before it as set out in

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<sup>28</sup> Ram Surat Duvedi v. Ram Kumar Trivedi, 1997 CrLJ 1667 (All).

<sup>29</sup> Dudekula Lal Sahib, (1917) 40 Mad 976.

<sup>30</sup> Namasivayam v. State, 1982 CriLJ 707.

<sup>31</sup> Emperor v. Jivram Dankarji, (1915) 17 BOMLR 881.

<sup>32</sup> Jivram Dankarji, (1915) 40 Bom 97.

<sup>33</sup> AIR 1939 Cal 65.

<sup>34</sup> 1966 AIR 69, 1965 SCR (3) 467.

Part B of Chapter XV are fulfilled. If they are not fulfilled the court does not obtain jurisdiction to try the offence.

Further, an acquittal by the court of incompetent jurisdiction is nothing more than a discharge<sup>35</sup>.

**C. Convicted or Acquitted.** The second trial is barred when the accused is convicted or acquitted in the previous trial. Discharge of an accused does not amount to an acquittal<sup>36</sup>. Accused is said to have been discharged, when he is relieved of legal proceedings by an order. That order does not amount to a judgment. He may be discharged after the preliminary enquiry or during a trial. Thus, a man who has been discharged may again be charged with the same offence if other testimony is discovered.

When a magistrate acquitted the accused in a private complaint on the ground of absence of the complainant and no steps were taken by the complainant to set aside the acquittal, a fresh complainant on the same facts were held to be barred<sup>37</sup>.

**Discharge in a summons case.** Discharge in a summons case amounts to acquittal. Hence a second trial was held to be barred<sup>38</sup>.

**D. Conviction or acquittal remains in force.** When a conviction or acquittal is set aside by a higher court, this section would not apply<sup>39</sup>. A judgment reversed by a court in error is the same as no judgment. Hence, in that case the plea of *autrefois acquit* does not apply<sup>40</sup>.

**E. Same offence.** For taking a plea under S.300, it must be established that the offence was the same. Even if the offences are different and based upon different facts, though the evidence is the same, the previous trial does not bar a second trial.

To operate as a bar the second prosecution and the consequential punishment thereunder, must be for “the same offence”. The crucial requirement therefore for attracting the Article is that the offences are the same, i.e., they should be identical<sup>41</sup>. If, however, the two offences are distinct, then though the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and

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<sup>35</sup> N. R. Ghose v. The State Of West Bengal, 1960 AIR 239, 1960 SCR (2) 58.

<sup>36</sup> E. K. Thankappan v. Union of India, 1989 CrLJ 2374.

<sup>37</sup> Rabindra Dhal v. Jairam Sethi, 1982 Cr.LJ 2144 (Ori).

<sup>38</sup> Id.

<sup>39</sup> Azam Ali v. Emperor, AIR 1929 All 710.

<sup>40</sup> R. v. Drury (1889) 18 LJ MC 189.

<sup>41</sup> The State of Bombay v. S. L. Apte and Another, 1961 AIR 578, 1961 SCR (3) 107.

see whether their identity is made out<sup>42</sup>.

**F. Other offences on same facts.** S. 300 also bars the trial of a person again for any other offence on the same facts. The expression ‘other offence’ would include minor offences and findings for which different charge from one made against the accused might have been made under S. 221(1) for which he might have been convicted under S.221(2)<sup>43</sup>.

If the accused has been convicted of misappropriation of one of two sums of money, he can not be again prosecuted for the second sum of money included in the first case<sup>44</sup>.

## V. PROVISIONS IN OTHER COUNTRIES

Other nations of the world also contain the constitutional mandate as to the prohibition of the double jeopardy in their constitutional schemes. These detailed provisions are as follows:

**1. The 5<sup>th</sup> Amendment to the U.S. Constitution.** In 1791, the 5<sup>th</sup> Amendment (Amendment V) to the U.S. Constitution was inserted to give effect to the prohibition of double jeopardy. The text of the Amendment says:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**2. Provision in Australia.** The prohibition against double jeopardy has also been recognized in Australia. In the landmark case of *R v Carroll*<sup>45</sup>, the High Court of Australia gave emphasis on the prohibition of double jeopardy.

**3. Provision in United Kingdom.** In the U.K., the Criminal Justice Act 2003 was passed by the Parliament of the United Kingdom. It amends the law relating double jeopardy. It has also expanded the circumstances in which defendants can be tried twice for the same offence, when “new and compelling evidence” is introduced.

**4. Japanese constitution.** Article 39 of the Japanese constitution lays down the provision as to the prohibition of double jeopardy. It reads that:

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<sup>42</sup> Ibid.

<sup>43</sup> State v. Prakash, 1977 Cr.LJ 863 (Cal-Db).

<sup>44</sup> Balram Swain v. State of Orissa, 1987 Cr.LJ 2030 (Ori.).

<sup>45</sup> (2002) 213 CLR 635; [2002] HCA 55

No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he had been acquitted, nor shall he be placed in double jeopardy.

## **VI. ISSUE ESTOPPEL AND AUTREFOIS ACQUIT AND AUTRFOIS CONVICT**

The principle of issue estoppel or *res judicata* is different from the principle of “double jeopardy” or *autrefois acquit* embodied in the Section 300. The rule of issue estoppel prevents the admissibility of evidence which is designed to upset the finding of the fact recorded by a competent Court at a previous trial.

## **VII. DOUBLE JEOPARDY AND AUTREFOIS ACQUIT AND AUTRFOIS CONVICT**

Article 20(2) of the Indian constitution touches upon the provision of the prohibition of double jeopardy. It reads that “No person shall be prosecuted and punished for the same offence more than once”. However, it only recognizes the principle of *autrefois convict*. In that respect, the provision under S.300 is much wider as it also embraces the concept of *autrefois acquit*.

## **VIII. CONCLUSION**

In sum, it can be observed through various case laws that the plea of *autrefois acquit* and *autrefois convict* serve as a measure to give effect to the constitutional mandate of prohibition of double jeopardy. The plea has been recognized in S.300 of the Code. But a brief study of the plea reveals that even due to the fault on the part of the court as to the assumption of its jurisdiction or to the sanction for trying the suit, the accused has to suffer.

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