

What is double jeopardy?

March 21, 2023

In news— The concept of double jeopardy has come to light amidst a Delhi Court sentenced two former Delhi Jal Board (DJB) officials in a money laundering case registered by the Enforcement Directorate (ED) in 2009, against which it filed a complaint after a delay of 11 years, in 2021.

What is double jeopardy?

- “Double jeopardy” comes from the Latin maxim “Nemo bis punitur pro eodem delicto”, which means that **no one can be tried for the same offence twice**. It has existed since the days of the Greeks and Romans, even finding a mention in the Justinian code, Canon law, Common Law, and the Fifth Amendment.
- **In India, this doctrine existed even before the Constitution came into being**. A case in point would be the now-repealed General Clauses Act, of 1897 and **Section 300 of the Criminal Procedure Code of 1973**, which **says that a person once convicted or acquitted cannot be tried for the same offence**.
- In its 2022 ruling in *‘T.P. Gopalakrishnan vs. State of Kerala,’* the **Supreme Court** went so far as to say that **Section 300 bars the trial of a person not just for the same offence but also for any other offence on the same facts**.
- **The doctrine of double jeopardy is enshrined in the Indian Constitution under Article 20 (2), which says,** “No person shall be prosecuted and punished for the same offence more than once.”
- **It guarantees immunity from double punishment and bars a second prosecution** only where the accused has been both prosecuted and punished for the same offence previously, as held by the Supreme Court in its 1954 ruling in *‘Venkataraman SA vs. Union of India’*.

- However, **in its 1996 ruling in 'AA Mulla vs State of Maharashtra', the apex court held that Article 20(2) does not bar subsequent trials** if the ingredients of the offences in the previous and subsequent trials are distinct. Moreover, there are certain conditions for the application of Article 20 (2).

The conditions for the application of Article 20(2)-

It states:

- There must have been previous proceedings before a court of law or a judicial tribunal of competent jurisdiction.
- The person must have been prosecuted in the previous proceedings.
- The conviction or acquittal in the previous proceeding must be in force at the time of the second trial.
- The offence which is a subject matter of the second proceeding must be the same as that of the first proceeding for which the accused was prosecuted and punished.
- The "offence" must be an offence as defined in Section 3(38) of the General Clauses Act which defines it as any act or omission made punishable by any law for the time being in force. The prosecution must also be valid and not null, void, or abortive.
- The subsequent proceeding must be a fresh proceeding where an accused is being prosecuted for the same offence twice. Hence, this clause does not apply when the later proceedings are a continuation of the previous proceedings, nor does it bar a retrial on appeal with a direction to frame charges, provided the retrial is for the same offence or offence as the original trial.

Why did the court allow ED's case after 11 years?

- **The Prevention of Money Laundering Act does not provide for a limitation period for money laundering.** This

indicates that the law laid down in Section 468 of the CrPC, which states that there is no limitation period for offences punishable with three years imprisonment or more, will apply.

- In this case, the court observed that the accused were nearing the completion of their sentence when the “ED suddenly filed the present complaint under the PMLA Act” on March 30, 2021, for the commission of offences under Section 4 read with Section 3. The former deals with punishment for money laundering, stipulating a minimum of three years imprisonment, while the latter defines “money laundering”.
- That the ED registered its Enforcement Case Information Report (ECIR) on December 17, 2009, and took about 11 years to file the complaint in court was also observed by the court and contested by the accused.
- While the accused pleaded for leniency on grounds of double jeopardy and delay in ED filing the complaint, the court said that the wording of Section 4 of the PMLA Act seeks mandatory rigorous punishment of at least three years and the accused can’t be given the benefit of Probation of Offenders Act.
- The court also acknowledged the possibility of imposing a concurrent sentence, had the ED filed its complaint during the pendency of the CBI case.
- However, it said that it was not bound to do so, saying, No doubt, this strong possibility of awarding concurrent sentences now has been snatched from the accused persons due to delayed complaint filed by ED but there was no limitation for filing the present complaint case.