

General Clauses Act 1897 s 26 - Provision as to offences punishable under two or more enactments

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

SYNOPSIS

Double jeopardy

- Distinct offence
- Same set of facts
- Subsequent enactment
- Offence under two or more enactments

Double jeopardy

Section 26 of the General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be punished under either or any of those enactments; but shall not be liable to be punished twice for the same offence. To same effect is Article 20(2) of the Constitution which directs that no person shall be prosecuted and punished for the same offence more than once. But both these provisions apply only when the two offences which form the subject of prosecution or prosecutions are the same, i.e., the ingredients which constitute the two offences are the same. ^{^1}

Distinct offence: So, if the offences under the two enactments are distinct and not identical, none of these provisions will

¹ Singh 2021 p 530

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apply.<sup>2</sup> In other words, where the offences are distinct there is no question of application of rule of double jeopardy.<sup>3</sup>

**Same set of facts:** But if the same set of facts constitutes only one offence for which an accused has been tried previously, he cannot be tried once again for it is prohibited under Sec 403 of Criminal Procedure Code 1898 (Sec 300 of Criminal Procedure Code 1973): Person once convicted or acquitted not to be tried for same offence, COI Art 20(3): Double jeopardy, and GC Sec 26.<sup>4</sup>

**Subsequent enactment:** The construction placed upon section 26 of the General Clauses Act that it applies only when the offences described in the two enactments are identical very much limits its operation, for in most cases where a subsequent enactment will describe an offence identical in terms with an earlier enactment, the earlier enactment will be deemed to be repealed on principles stated in the preceding paragraph. It is submitted that the emphasis in the opening words of section 26 is not upon the identity of offences but upon the identity of act or omission constituting the offence.<sup>5</sup>

**Offence under two or more enactments:** There is no bar to the trial or conviction of the offender under two enactments (Section 177 of Indian Penal Code and Section 52 of the Income Tax Act 1922 in the instant case) at the same time but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be

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<sup>2</sup> State of Madhya Pradesh v Veereshwar Rao, AIR 1957 SC 592 cited in Singh 2021 p 530

<sup>3</sup> State of Bombay v S.L. Apte AIR 1961 SC 578

<sup>4</sup> Manipur Administration v Thokchom Bira Singh AIR 1965 SC 87

<sup>5</sup> Delhi Municipality v Shivshanker (1971) 1 SCC 442 cited in Singh 2021 p 531

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prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.⁶

⁶ T.S. Baliah v T.S. Rengachari AIR 1969 SC 701