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# **RES JUDICATA: THE BACKBONE OF CIVIL PROCEDURE CODE**

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SUBJECT: CIVIL PROCEDURE CODE

BBA.LLB [HONS], 3RD YEAR

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## **ABSTRACT**

*In the view of present scenario of our Judiciary and the backlog of cases on our Judicial Institutions, Sec 11 of Code of civil Procedure 1908 is nothing less than a knight with shining armour. The notion of Sec11 is clear, it serves as a clear guideline and prevents institution of repetition and frivolous suits. This research paper aims to especially portray how the above mentioned section is the back bone of civil procedure. This paper focusses on the landmark judgements that shaped and expanded its scope, the elaboration and explanation of sec 11, the application and exceptions to the doctrine of Res Judicata. This paper additionally briefly looks into its origins and the principles it's based on for better, clear and concise understanding of the Doctrine.*

## **RESEARCH OBJECTIVE**

- To understand the concept of Res Judicata.
- To elaborate and understand the explanations in sec 11 of Civil Procedure Code.
- To analyse landmark cases in relation to applicability and exception of the doctrine of Res Judicata.

## INTRODUCTION

The English Common Law System gave birth to the concept of res judicata. Res judicata was originally included into the Common Law and then to Code of Civil Procedure 1908. The principle of Res Judicata comes under Sec 11 of Code of Civil Procedure. Res Judicata is also known as “rule of conclusiveness of judgement”. It is a principle of public policy to somewhere put an end to litigation. It is a bar for litigation, in layman’s language when a previous suit between same parties for the same subject matter has been decided by a competent court then the same suit cannot be raised in a new suit under new litigation. The judgement of Competent Court can attain finality. This principle plays a role in administrative law as well as it looks into how the judiciary works and helps into disposal of cases efficiently. The aggrieved party may file false and frivolous suit to harass and or harm the reputation of the other party, sec 11 of Code of Civil Procedure helps to block such overload of cases.

Sir Lawrence Jennings - House of Lords- England stated Res Judicata is a judicial creation and which enunciates that a matter adjudged is taken for truth.

The Latin Maxim “Res” is dispute and “Judicata” is dispute and the literally translates to “a matter adjudged”. The term Res judicata is not mentioned in the Indian Constitution but Article 20 of the Indian Constitution states that a man shall not be tried for a same offence again and again. This is the principle of Double Jeopardy and here is the rationale of Res Judicata.

Doctrine of Res Judicata is relied on 3 important maxims:

- i. Nemo debet bis vexari pro una et eadem causa -No man should be vexed for a same offence twice.
- ii. Interest republican ut sit finis lithium-That there shall be an end to litigation
- iii. Res judicata pro veritate occipital -Judicial decisions must be accepted as correct.

These principles are founded on the principle of justice, equity and good conscience.

According to ancient Hindu law, res judicata was previously referred to as Purva Nyaya or previous judgement by Hindu lawyers and Muslim jurists. This doctrine is also incorporated by U.S. Constitution in its seventh amendment.

The doctrine of Res-Judicata is being applied in civil suits, arbitration proceeding, taxation matters, industrial adjudications, writ petitions, administrative orders, interim orders, criminal proceedings etc. This doctrine is not exhaustive under Code of Civil Procedure, 1908.

## CONCEPTUAL ANALYSIS OF RES JUDICATA.

This Principle of Res Judicata under Sec 11 of Code of Civil Procedure 1908 helps in understanding whether a party is competent to file a suit, whether a party can file a suit again or not, what are the conditions under which a party can file a suit again.

### Ingredients of Res Judicata:

- i. **Later Suits Must Contain the Same Parties-** In order to establish the rule of Res-Judicata, the parties in a subsequent suit must be the same or between the same parties who had a claim.
- ii. **The Suit's Title Must Be the Same-** Another crucial factor is that the opposing parties' titles must be the same in order to establish the rule of Res-Judicata.
- iii. **The Court has resolved the case on the merits and should be competent to try the case-** the courts should hear all parties on the merits and render a decision on the merits.
- iv. **The Disputed Subject-Matter Must Be the Same-** The Disputed Subject-Matter Must Be the Same in Previous and Subsequent Suits.

**Failure to apply the Doctrine of Res Judicata:** When a court fails to apply Res Judicata and renders a different verdict on the same claim or issue, a “last in time” rule will be applied. It gives effect to the subsequent verdict, and it makes no difference whether the result was different the second time around. The parties to the lawsuit are usually responsible for bringing the earlier case to the judge's attention, and the judge must then decide how to apply it or whether to acknowledge it at all.

**Explanation I of Sec 11:** Former Suit i.e a suit which has been decided prior to a suit in question. Though the suit is filed secondly. It is not necessary to file a suit earlier in time it is necessary to look which court has given its findings earlier in time.

Example: A Special Performance Suit is filed in 2008 and in 2020 a Special Performance suit for the same contract is filed. The 2020 suit is decided earlier this decision will be binding on the 1<sup>st</sup> suit by way of Res Judicata.

In the Case of *Gulam Abbas & Ors vs State of U.P.*<sup>1</sup> the scope of res judicata was laid down clearly. The rules were used as evidence in this case as a plea of an issue that had already been tried in a previous case. The judges had a tough time deciding this issue because they needed to use res judicata. It was decided that res judicata is not exhaustive, and that even if the matter is not explicitly covered by the section's provisions, it would be treated as a case of res judicata based on general principles

**Explanation II of sec 11:** A decision is given by the court and after the decision a subsequent suit is filed by one of the parties, the decision of the 1<sup>st</sup> suit will operate as Res Judicata. Regardless such decision has been challenged in Appeal. That decision is binding by way of Res Judicata. The subsequent suit of the same will not lie at any cost and can only be contented further in Appeal Only.

The doctrine of Res-Judicata is used at various stages of a proceeding. In the case of *Ajay Mohan v H.N. Rai*<sup>2</sup> held that if the court issues an interim order during the pendency of the matter, it will serve as Res-Judicata in any subsequent suits. For example, once a court has decided on the maintainability of an action, or a question about a court's jurisdiction, it will not be reopened in the same proceedings. The aggrieved party's only option is to file an appeal in a higher court of law against the lower court's interim order.

**Explanation VI of Sec 11:** Every suit that is filed in representative capacity is binding on the person who files the suit as well as those who are going to benefit from that suit and later on whom the decision is binding cannot file a separate suit as his right.

**Representative suits** are those that are brought in a representative capacity rather than a personal capacity. In the case of *Ahmad Adam Sait v. M.E. Makhri*<sup>3</sup>, it was held that where persons litigate bona fide for the public good, all subsequent proceedings are precluded by Res-Judicata.

**Res-Judicata exists between Co-Plaintiffs and Co-Defendants**, exists just as it does between Plaintiffs and Defendants, on the grounds that there is a conflict of interest between Co-Plaintiffs

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<sup>1</sup> 1981 AIR 2198 SCR(1) 1077

<sup>2</sup> AIR 2008 SC 804

<sup>3</sup> AIR 1964 SC 107

or Co-Defendants. The Hon'ble Bench of the Supreme Court in the case of *Iftikar Ahmed and Syed Meharban Ali*<sup>4</sup>, held that if there is a conflict between plaintiffs and the matter is to be decided in order to provide relief to the Defendant, and the matter is further decided, it will act as Res-Judicata between co-plaintiffs in future suits.

The Court's findings alone will not serve as Res-Judicata. The Hon'ble Supreme Court of India In *Ganga Bai v. Vijay Kumar & Ors*<sup>5</sup>, held that an appeal in the High Court can only be filed against a lower court's decree and decision, but not against the lower court's findings.

Also, in *Smt. Daropati Devi v. Sohan Lal & Ors*<sup>6</sup>, it was stated that Respondents must plead that the litigation is prohibited by Res-Judicata in their written statements. If Respondents do not make a plea in Written Statement, the Doctrine of Res-Judicata cannot be applied. In the landmark case of *P.C. Ray and Company Private Limited v. Union of India*<sup>7</sup>, it was decided that a party to a proceeding might waive the res judicata defence. The defence of res judicata will be waived if the defendant does not raise it. The res judicata principle is part of the procedure, and either party might waive the res judicata plea. Because the issue of res judicata has not been mentioned in the proceedings, the court can dismiss it.

**Res Judicata and Rule of Law:** In the landmark case of *Daryao v. State of Uttar Pradesh*<sup>8</sup>, it clearly embarks that the principle of Res Judicata has a much larger and universal application than Rule of law. The petitioners filed a writ case under Article-226 at the Allahabad High Court, but it was dismissed. Subsequently, a writ was filed and the court upheld the Principle.

### **Res Judicata and Res Sub Judice:-**

A case that is pending trial is referred to as Res Sub Judice, whereas a matter that has been adjudicated or arbitrated is referred to as Res Judicata.

The trial of a suit that is pending conclusion in a previous suit is prohibited by Res Sub Judice, but the trial of a suit that has been concluded in a previous suit is prohibited by Res Judicata.

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<sup>4</sup> 1974) 2 SCC 151

<sup>5</sup> 1974 AIR (SC) 1126

<sup>6</sup> 1984 (1) RLR 414,

<sup>7</sup> AIR 1971 Cal 512

<sup>8</sup> AIR 1961 SC 1457

Section 11 of the Civil Procedure Code contains a **Rule of Constructive Res Judicata**, which is an artificial type of res judicata. It states that if a party enters a plea in a proceeding between him and the defendant, he will not be allowed to enter a plea against the same party in a subsequent proceeding involving the same topic.

### **Explanation III & IV of Sec 11. –Example:**

The Plaintiff asserted certain facts, the defendant contest the fact and denies the validity of the contract. The Court gives its finding that Special Performance contract is void. The plaintiff now filed a 2nd suit claiming compensation of 50,000 Rupees. The decision of the 1st Suit will apply as Res Judicata on the 2nd Suit. Though Remedies are different in both the suits, the matter has been constructively decided and 2nd suit cannot be instituted.

If any issue has been decided in previously instituted suit i.e former suit. The court comments or gives his findings which are necessary to determine the fact in issue in a subsequent suit. The 2<sup>nd</sup> Suit is barred by constructive Res judicata. The court has given its decisions not expressly, its findings are an issue in the 2<sup>nd</sup> suit than it said that the 2<sup>nd</sup> suit is barred by Constructive Res Judicata.

The principle of constructive Res Judicata is further cleared in the landmark case of *State of Uttar Pradesh v. Nawab Hussain*<sup>9</sup> where it was held that the plaintiff had knowledge of the findings and doctrine of Res Judicata is applicable.

**Explanation V of sec 11:** Any relief claimed in plaint, which is not expressly granted by the decree shall for the purpose of this section, deemed to have been refused.

## **CRITICAL ANALYSIS OF THE EXCEPTIONS AND APPLICABILITY TO THE DOCTRINE OF RES JUDICATA:**

The section has no bearing on the Court's jurisdiction, but it does serve as a guideline for the trial of the complaint or problem. According to the theory of Res Judicata, the party bears the burden of proof. Section 11 of the C.P.C. is not an index, but rather a requirement.

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<sup>9</sup> 1977 AIR 1680 SCR (3) 428

The Supreme Court laid down three exceptions to the doctrine of Res Judicata:

- i. Lack of Jurisdiction:
- ii. When the case is purely a legal issue.
- iii. When a decision is obtained via deception i.e. fraud of the Court.

**Criminal Proceedings:** The Supreme Court of India declared in *Bhagat Ram v. State of Rajasthan*<sup>10</sup>, that once a person is acquitted or convicted by a competent criminal court of law, he cannot be tried for the same crime twice since the doctrine of Res-Judicata prevents it. The Supreme Court of India overruled this decision in *Fatima Bibi Ahmed Patel v. the State of Gujarat*<sup>11</sup> held that the Res Judicata principle does not apply to criminal matters.

Based on merit: In the case of *Devi Lal v Sales Tax Officer*<sup>12</sup> B questioned the legality of an assessment order issued under Article 226. The petition was dismissed on the grounds that it lacked merit. On the merits, the Supreme Court dismissed the appeal against the order. B filed a new writ petition in the same High Court, this time challenging the same assessment judgment. The petition was dismissed by the High Court this time. The Supreme Court ruled that the petition was precluded by the res judicata principle.

The notion of res judicata does not apply if the question has not been decided on the merits previously.<sup>13</sup>

**Unadulterated legal Issue:** In the case of *Mathura Prasad v. Dossibai N.B. Jeejeebhoy*<sup>14</sup>, it was decided that res judicata exists between the parties to the prior case and that they cannot proceed in a subsequent case. In general, even on a question of law, a ruling by a competent court acts as res judicata. However, res judicata will not apply to a legal matter that is unrelated to the facts that give rise to the right. The decision has previously been revised by an authority where the cause of action is different or the legislation is different. The ruling will be declared valid, and the doctrine of res judicata will not apply in later proceedings.

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<sup>10</sup> AIR 1972 SC 1502

<sup>11</sup> (2008) 6 SCC 789

<sup>12</sup> 1965 AIR 1150, 1965 SCR (1) 686

<sup>13</sup> State of Uttar Pradesh & Anr. v. Jagdish Sharan Agrawal & Ors., (2009) 1 SCC 689.

<sup>14</sup> 1971 AIR 2355, 1970 SCR (3) 830

## Jurisdiction:

**Explanation VIII of sec11:** If in a former suit the court gives any decision and this decision given by the court is final and the court has jurisdiction than this will operate ad Res Judicata to the subsequent suit which is instituted before a court of limited jurisdiction i.e whether the court has jurisdiction it does not matter. So the subsequent suit filed before court has jurisdiction does not matter what matters is whether the decision of former suit will operate and is binding as Res Judicata.

In the case of *P.V.N. Devoki Amma v. P.V.N. Kunhi Raman Nair*<sup>15</sup>, Hon'ble Kerala High Court held that court of limited jurisdiction is broad enough to include a court with a pecuniary limit on its jurisdiction.

The theory does not apply if the decision is issued by a court with no inherent jurisdiction or if the judgement is silent, i.e. when a matter is summarily dismissed or a judgement is issued without a discussion of the facts, reasons, or explicit findings.<sup>16</sup>

The courts with exclusive jurisdiction i.e administrative courts, land acquisition courts etc any subsequent plea in such courts adhere to the doctrine of Res Judicata.

In the case of *Avtar Singh v. Jagjit Singh*<sup>17</sup>, a particular situation arose. A filed a civil suit, and B asserted a claim challenging the Court's arbitration. The plaintiff's objection was upheld, and the plaint was returned to the plaintiff for presentation. When A contacted the Revenue Court, he was told that he didn't have any jurisdiction, so he returned the petition. A filed a lawsuit in the Civil Court once more. The law of res judicata, as contented by B barred the suit.

The decisions rendered by Courts with concurrent jurisdiction will also fall under the ambit of Doctrine of Res judicata.

**Fraud:** In *Beliram and Brothers v. Chaudari Mohammed Afzal*<sup>18</sup>, it was held that where a minors suit was brought in collusion with the defendants and the suit was a fictitious suit, the decree

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<sup>15</sup> 1980 AIR (Kerala) 230

<sup>16</sup> (Vide Union of India v. Pramod Gupta (Dead) by L.Rs. & Ors., (2005) 12 SCC 1).

<sup>17</sup> 1979 AIR 1911, 1980 SCR (1) 122

<sup>18</sup> (1948) 50 BOMLR 674

obtained therein is one obtained by fraud and collusion within the meaning of the Indian Evidence Act, 1872, s. 44, and does not operate under the doctrine of Res Judicata.

A complaint was brought in the Court in the case of *Jallur Venkata Seshayya v. Thadviconda Koteswara Rao*<sup>19</sup> to designate some temples public temples and to set aside the manager's alienation of the endowed property. A similar complaint had been dismissed by the Court two years earlier, and the plaintiffs argued that the plaintiffs (in the previous suit) had committed gross negligence, and thus the theory of Res Judicata need not be applied.

**Writs:** Res-Judicata does not applied in writ petitions but there is no right ground to prevent the decisions in the matters in writ proceedings under Article-32 or Article-226 of Indian Constitution from operating as Res-Judicata in the subsequent proceedings.

The Supreme Court held in the case of *Rural Litigation And Entitlement Kendra v. State of Uttar Pradesh*<sup>20</sup> that the writ petitions filed in the Supreme Court are not inter-party disputes, but rather public interest litigation, the doctrine of Res Judicata does not apply.

For the first time, the Supreme Court of India declared in *MSM Sharma v. Dr Shree Krishna*,<sup>21</sup> that section-11 of the Code of Civil Procedure, 1908 will be applicable to writ petitions as well. The Hon'ble Bench decided that if a petition filed under Article 32 or Article 226 of the Indian Constitution is dismissed, Res-Judicata bars subsequent petitions. Unless the ruling is reversed on appeal, the parties are obligated to submit additional petitions in a court of law.

In public interest cases, the standard of Res Judicata isn't as important. Where the public interest initially aligns with illegal mining, subsequent public interest litigation to protect the environment is not prohibited.

The Supreme Court was specifically asked to decide the issue in *Forward Construction Co. Prabhat Mandal*<sup>22</sup>. The Supreme Court ruled that the principle applied to public interest litigation as long as it was a genuine case.

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<sup>19</sup> (1937) 39 BOMLR 317

<sup>20</sup> 1985 AIR 652, 1985 SCR (3) 169

<sup>21</sup> AIR 1960 SC 1186

<sup>22</sup> 1986 AIR 391, 1985 SCR Supl. (3) 766

**Explanation VII of sec 11:** The Principle of Res Judicata also applies to Execution Proceedings. Whenever a suit is filed it cannot be automatically enforced. For its enforcement a separate proceeding of Execution Proceeding needs to be instituted. Once the Court gives its decision than filing of execution proceeding is commenced to enforce the decision. When Execution proceeding gets dismissed, subsequently based on the same decision one cannot file the same execution proceeding<sup>23</sup>.

## CONCLUSION

Although the doctrine has a fair share of criticism such as Res judicata can also be applied to a decision that is not in accordance with the law. It includes not only issues related to bar, but also those that are to be litigated. For example, if a matter is dismissed by a court of law or equity on a specific issue, it is not considered a final ruling and legally res judicata applies, but it is not justifiable. The scope of Res Judicata is extremely broad, and it covers a wide range of topics, including Public Interest Litigations. This theory applies even when the Code of Civil Procedure is not in effect, and it encompasses a wide range of areas related to society and individuals. With the passage of time, the degree and degree have become larger, and the Supreme Court has expanded the areas with its judgements. The Doctrine of Res judicata is the backbone of civil courts as it is imminent in dismissing frivolous cases and given the backlog of cases in our judiciary is an extremely important doctrine in literal and administrative point of view. The doctrine is fairly simple and can be easily summarised. The conditions that are Public Policy, a matter which was directly or substantially is issue should have been heard in a previously instituted suit, the matter which is heard by competent court raised in subsequent suit, between two suits having the same parties litigating under same title for the same suit, the subsequent suit to be instituted in a competent court. If these five conditions are satisfied it is justifiable to say that the suit is barred by Res Judicata. The paper has tried to summarise the doctrine and its principle in a brief format and has also expanded the elaboration of Sec 11 of Civil Code of Procedure.

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<sup>23</sup> Order 21 of Civil Procedure Code 1908

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