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## **ABOUT US**

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# YOU CAN NOT CLOCK BACK

*(Explaining the Res Judicata principle as a set-up in the court of Chanakya, according to the Dharmasthiya.)*

AUTHORED BY - DIVYANSHI BHARDWAJ

## Abstract

For purposes of navigating through and understanding the paper, it is important to note that it has been set in the Mauryan Empire, specifically, during Chandragupta Maurya's dynasty. Chanakya, in this hypothetical, will be the Chief Justice of the Empire; all the laws of this Empire will be mirrored with the Indian Constitution, the Code of Civil Procedure and the Law of Evidence.

According to the Arthashastras, there were two kinds of courts during that era- the Dharmasthiyas, which were the civil courts, and the Kantakasodhana, which were the criminal courts. The main function of these latter courts was to resolve any cases that arose whenever there was a violation of traditional rules and regulations, and the fines were nominal only.

In this paper, Res Judicata will be referred to as Prag-nyaya throughout, the way it was referred to in the ancient times, according to Brihaspati Samriti.

### **Chanakya, CJ.**

1. The petitioner, Suraj, is a worker who ploughs wheat fields for a living. Before this, he used to work under a gold merchant. To make sense of this writ petition, it's essential to understand the history and background of where this suit stems from.

2. According to the petitioner's claims in the previous suit that he filed against his former employer, Chaand, the petitioner claimed that he was the workhorse of his former employer's business. Petitioner would give him ideas that helped his business bloom from someone who only sold at a small shop here at Bodh Gaya, to someone who found a respectable place at the Patliputra market that prides itself as a spot in the prestigious Silk Route to sell cotton, and other luxurious items and jewellery made of gold. In his previous suit, the petitioner also claimed that Chaand promised to give him an executive managerial position that would someday turn into the petitioner handling the business. After a publicly humiliating scolding at the peak hours of the market for

taking his lunch break for ten minutes longer last year, the petitioner was fired from his job. The petitioner initially filed a suit in the esteemed Dharmasthiya Court of Patliputra, stating that this the where the issue happened and claimed territorial jurisdiction on the basis of ‘this is where the business took place that day’, but my wise friends transferred the suit to the Bodh Gaya Court stating for it to be a much more competent Court, considering the subject matter and also territorial jurisdiction stating that Patliputra was only a place where business was held ‘once a year’; their business, and their voluntary residences are both in Bodh Gaya.

3. This legal system recognises three prime jurisdictions- one, pecuniary jurisdiction that applies according to the amount or value of the suits that are to be filed before it. However, it’s critical to steer through cases wherein the plaintiff undervalues or overvalues his/her claim deliberately; second, territorial jurisdiction refers to the area over which a particular court exercises influence, and lastly, subject matter jurisdiction is the authority of a court to decide themselves if the matter that is to be litigated before them is allowed or not. Any order that is passed by a court that does not have proper jurisdiction will be a nullity.

4. The petitioner filed a suit against his former employer in light of how he wasn’t given the job that he was promised and that he was fired on insufficient grounds. His suit was first filed at the Kantakasodhana, and was later, transferred to Dharmasthiya. This hardship was also highlighted by the petitioner in his petition, and to clear the doubt, his former suit being of civil nature, due to a breach of the alleged contract, cannot be tried at a Kantakasodhana; the only court competent enough to try it is a Dharmasthiya. Competency of a court refers to the legal capability of a court to exercise jurisdiction over the subject of a suit. Further, jurisdiction is the power to hear and determine a suit in a competent court.<sup>1</sup>

5. Due to the reasons that the petitioner had little to no proof about his prospective job, and the claims made by Chaand that Suraj would regularly be lazy and late, and have a lot of arrogance for his work, the petitioner lost the suit and was not allowed plead the same suit again at any courts; after which, he has filed this writ petition.

6. The rule against which the plaintiff has filed a writ in this Court is that of Prag-nyaya. This provision, that is, Section 11 of the Dharmasthiya rule book<sup>2</sup>, embodies the concept of-

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<sup>1</sup> Britannica, T. Editors of Encyclopaedia ‘demurrer’ Encyclopaedia Britannica, (April 12, 2018) <<https://www.britannica.com/topic/demurrer>> accessed 06 April 2023

<sup>2</sup> Code of Civil Procedure, 1908

*“if a person who has been defeated in a civil suit according to law files his plaint once again, he must be told that he has been defeated already”*

## According to Section 11 of the Dharm

### **asthiya<sup>3</sup> rule book-**

*No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

7. Here, the phrase “former suit” denotes a suit that has been decided previously. This concept, in this dynasty’s courts, was best elaborated by my wise friend Justice Das who very well explained-

*“the principle of prag-nyaya is based on the need of giving finality to judicial decisions. What it says is that once a prag is nyaya, it shall not be adjudged again. It primarily applies between past litigation and future litigation.....neither party will be allowed in a future suit or proceeding between the same parties to canvas the matter again.”<sup>4</sup>*

8. This concept embodies the rule of conclusiveness, and it bars the plea of an issue that has been tried in an earlier suit foundational on a plaint that was either substantially or directly in issue, which later became final. In the later suit, functioning between the same parties or their competencies in a competent Court, the decree in the former suit would apply as Prag-nyaya. The most important element for this doctrine to function and to apply is when both and/or all parties are the same as in the suit decided earlier.

9. A few things that are important to note here are that, number one, the phrase “former suit” denotes a suit which has already been concluded with respect to the suit in front of another Court, or the same Court. Number two, the competence of the Court shall be understood regardless of any provisions as to a right of appeal, stemming from the Court’s decision. Three, any material

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<sup>3</sup> Ibid.

<sup>4</sup> *Satyadhyan Ghosal v Deorijin Debi* AIR [1960] SC 941: [1960] 3 SCR 590

that might have, or ought to have been made previously as a defence ground, or an attack ground, shall be deemed to have been a concerned matter substantially and directly in issue in such suit. Four, any relief that is claimed by the plaintiff, which is not expressly granted by a Court's decree shall be deemed to have been refused by such competent Court. And five, any issue which has been heard and decided to its finality by a Court of limited jurisdiction shall also work as Prag-nyaya.

10. It is important to understand that the concept of Prag-nyaya does not mould out a right or an interest in property, but merely works as a bar to further try the same issue over and over again. Its main objective is to prevent a multiplicity of suits and trials of the same matter and accords a finality to the matters in question because, at the end of the day, it's essential to put an end to vexatious litigations and save the valued time of a Court. The ideals of Prag-nyaya are based on and for public policies, and also for private policies. This is a universal rule<sup>5</sup> for any civilization that follows proper law and order. This doctrine aims to encourage justice, honesty and a fair administration and to avoid and safeguard persons from law abuses.<sup>6</sup>

11. It has come to the Court's notice that before this, another individual had filed petitions regarding how Prag-Nyaya goes against Article 32<sup>7</sup> of our dynasty's Constitution<sup>8</sup>. So the Court's decided to explain the doctrine and put it to rest once and for all, explaining how it does not step on the rights of the individuals, rather, exists for the betterment of the individuals and the society at large.

12. The ideal of Prag-nyaya is based on three ideals, which can also be traced back to Brihaspati Samriti-

1. न कश्चित् पुरुषः एकस्मिन् कारणे द्विवारं व्याकुलः भवेत्

This means that no man should be troubled by and for the same reason. It helps the individual approaching the Court with the hope that there'll be justice as soon as possible because, at the end of the day, the Courts are set up to serve people and making them go back and forth for the same matter will only lead them to pull their hair out. The Courts are supposed to be a form of ending their misery and providing them with justice.

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<sup>5</sup> In this suit, the SC held that res judicata is a concept that is universally applied; *M. Nagabhushana v State of Karnataka*, [2011] 3 SCC 408; [2011] 1 SCC (Civ) 733

<sup>6</sup> Ibid.

<sup>7</sup> *Daryao v State of U.P.*, AIR [1961] SC 1457; [1962] 1 SCR 574

<sup>8</sup> Constitution of India, 1950

2. राज्यस्य हिताय अस्ति मुकदमस्य अन्तः भवेत्

This means that it is in the best interest of the State to end a lawsuit. It helps the State to move ahead from one suit to another, and it saves the time and energy of the State to dispense justice quicker.

3. न्यायिकनिर्णयः सम्यक् इति स्वीकारणीयः

This means that a judicial decision that has been passed by the Court, must be accepted as correct. Here, however, this Court would like to clarify that although this maxim is that of an assertive nature, it's important to know that we live in a society that is governed by rules and regulations for the smooth running of this dynasty. And with that ideal, it is important to acknowledge that what the law decides, is the final verdict.

13. The petitioner contends that this doctrine also infringes on his personal right to seek justice. On this matter, this Court would again like to reiterate that the doctrine has been placed and thoroughly practised so that there is a finality to the suits and justice is dispensed on time and the aggrieved persons are not stuck circling courts.

14. Further, it is also important to understand the important points with regard to when invoking Section 11 of Dharmasthiya is justified. One, the matter-in-issue must be actually or constructively in issue in the former suit; two, the suit must be between the same parties, and with the same titles; three, the former suit must have been tried by a competent court; and lastly, the matter-in-issue must've been heard and decided to its finality.

15. Prag-nyaya, by its very essence, means that the Court has decided its mind over the issue, and it has been heard to its finality. It is essential that it must have been heard and decided to its finality for this doctrine to kick in. However, if a suit is dismissed on technical grounds, for instance, non-joinder of a necessary party, then it would not operate as res judicata.<sup>9</sup> This doctrine operates when the decision has been made by hearing and finally deciding the suit on its merits.

16. Prag-nyaya is not found only in Dharmasthiya; as a concept walking on the similar lines, we find another concept named 'estoppel' in sakshya vidhi<sup>10</sup>. They are similar in the sense that prag-nyaya is just an estoppel verdict that is passed through a judgment. Sakshya vidhi clearly states

<sup>9</sup> State of Maharashtra v National Construction Co., [1996] 1 SCC 735

<sup>10</sup> Law of Evidence, 1872

that once proof is submitted and that something has been proved to be true, then the Court quite literally stops you from going back on your word. Prag-nyaya is estoppel, but after the verdict has come out. But if, someone takes back their suit, as in withdraws their suit, that suit will not stand as prag-nyaya because of the simple fact that the suit never reached its finality, so something that has not been decided, can't not be re-heard. The main difference between estoppel and prag-nyaya is that the former stops an individual from going back on his word after it's been proved, and the latter stops an individual from trying the same suit, more than once.

17. It's easy to be confused with the assumption that prag-nyaya cannot operate if a writ petition is filed. That also, through this judgment, shall be put to rest. Prag-nyaya would apply also on writ petitions<sup>11</sup> that have been filed under Article 32 of the Mauryan Constitution.<sup>12</sup> The nature and character of this doctrine shall be upheld with esteem and shall treat judgments pronounced by competent courts as binding.<sup>13</sup>

18. In extension, constructive prag-nyaya applies on writ petitions as well<sup>14</sup>. Constructive prag-nyaya works as an artificial form of the doctrine of prag-nyaya. The notion behind this is straightforward- if a party has the opportunity to raise a plea, they must raise it during the same proceeding and not leave for it to be raised as a defence or attack in the subsequent proceeding. The idea behind this is also fairly simple- to bring the litigation to its finality as soon as possible, for the public betterment. The case of *Maurya v Ramlal*<sup>15</sup> best explains this notion.

19. This Court, considering all facts and circumstances, shall squash the writ petition filed by the petitioner, Suraj, and upholds the validity of prag-nyaya. The court would also like to remind him, that his former suit holds no merit without evidence and that proper documentation is required while claiming a job because, without words on paper, it shall always be ruled as fictitious.

20. This writ petition is dismissed. No costs.

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<sup>11</sup> *M.S.M. Sharma v Dr Shree Krishna*, AIR [1960] SC 1186: [1961] 1 SCR 96

<sup>12</sup> Constitution (n 7)

<sup>13</sup> *Daryao* (n 6)

<sup>14</sup> *Devilal Modi v STO*, AIR [1965] SC 1150: [1965] 1 SCR 686

<sup>15</sup> *State of U.P. v Nawab Hussain* [1977] 2 SCC 806