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Res-judicata in other provisions of law

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Abstract
Doctrine of Res Judicata is based on the Maxim "*nemo debit vis vexari pro una et endem causa"*. The rule of res judicata provides no one ought to be troubled twice for one and same cause and interest. It is based on two principles, Namely, public policy that is, there should be an end to litigation and other hand to avoid hardship on the individual. In absence of this doctrine there would be no end to litigation and malicious litigant always achievers his success in vexing his poor opponent by filing repetitive suits in the court and such situation must be prevented by rule of law. Section 11 of Civil Procedure code restricts to file another suit in respect of same cause of action and same suit property and between same parties. If once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation by filing fresh suit. The rule of res judicata is combined result of public policy and public interest. The principle is founded on justice, equity and goods conscience. There must be an end to every litigation. Thus, it applies to civil suits, partition suits, execution proceedings, arbitration proceedings, taxation matters, industrial adjudication, writ petitions, administrative orders, interim orders, criminal proceedings, compensation recovery etc. The rest judicata restricts the abuse of process of court and bar to further suit in same matter in issue and has been heard and finally decided by competent court.
Our Constitution formed the fundamental right, which talks about protection from double jeopardy. Protection against double jeopardy is given in Article 20(2) of the Constitution.
This clause embodies the common law rule of *Nemo debet vis vexari* which means that no man should be put twice in peril for the same offence. If he is prosecuted against for the same offense for which he has already been prosecuted he can take complete defence of his former acquittal or conviction.
Therefore, res judicata is a protective law. It helps in reducing multiplicity of the cases. This principle can be used to prevent contradictions in the field of justice.
Thus, res judicata is preferred not only in the courts of India but through all over the world.

Keywords: judicata, preferred, provisions, judicata

Introduction
The rule of Res-Judicata has a very ancient history. It was well understood by Hindu lawyers and Mohammadan Juris. Hindu Law also called as 'Purva Nyaya'-
Under the Roman law, it was recognized that – "one suit and one decision was enough for any single dispute".
The doctrine of Res judicata is a fundamental concept based on public and private interest. It applies to civil suit, execution proceedings, arbitration proceedings, taxation matters, industrial adjudication, writ petition, administrative orders, interim orders, and criminal proceedings etc[1].
Res judicata means, "a thing adjudicated" or "an issue that has been definitively settled by judicial decision[2]".
The Principle operates as bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and substantially has arisen in the former suit between the same parties or their privies and was decided and has become final. So that the parties are not vexed twice over, vexatious litigation is put on end to and valuable time of the court is saved.

Brief History and Origin of Res-Judicata
"Res Judicata pro veritate – occipitar", is the full latin maxim which has, over the years, shrunk to mere "Res Judicata" which stand for, "the thing has been judged".
Res Judicate traces its origin to Roman law, but the earliest articulations within the common law, firstly the rule of Res Judicata appears to have been in the case of the, Duchess of Kingston3, in this case, CJ Sir William de Grey lays down two things, (i) Bar re-litigation (ii) Bar by Verdict.

Res Judicata in Indian statutes 1802-1908
Madras Regulation II of 1802 simply laid down the following rules:-
When a second suit may be instituted for the same cause of action, such second suit should be dismissed with cost to be paid by the plaintiff.
Despite seemingly referring only to the rule of Bar by judgment, by 1850, Indian Court had begun to apply this provision to incorporate both causes of action and issues.
In 1850, Macpherson formulated the rule of Res Judicata –

1. A Civil Court cannot entertain any cause which from the production of a former decree, or.
2. Of the records of the courts, shall appear to have been heard and determined by any former judge, or.
3. By any superintendent of a court having competent jurisdiction, or.
4. Even one, which under the rules against the splitting of claims, ought to have been included in a previous suit.

The doctrine of Res Judicata was present in the Indian legal system till 1850 included both Bar by judgement and bar by verdict.
In 1859, enactment of the first civil procedure code –

Section 2 to this code of 1859 code only enacted into law one element of the rule of res judicata - Bar by judgment but, Bar by verdict - begun to be felt by the judiciary.

Several cases arose after 1859 in which although the cases of action where distinct, the issue had already been heard and determined by a previous Court. However, Court avoid this outcome by holding that notwithstanding the restrictive language of section 2, a general rule of res judicata in India still applied which included bar by verdict.

In 1877, under the direction of the law commission the code of civil procedure was substantially altered and enacted in India the principle of res judicata was substantially reformulated.

So reformulated code describes the principal as –

No court shall try any suit or issue in which the matter directly and substantially in issue has been heard and finally decided by a court of competent to jurisdiction, in a formal suit between the same parties or between parties under whom they or any of them claim, litigation under same title.

In 1879, Court had succeeded in merging both "Bar By judgment" and "bar by verdict".

In the two decades, the code of 1879 was modified a few times. Finally code of civil procedure was comprehensively Restructured and re-enacted into its present form as the code of civil procedure code 1908.

The doctrine of res –judicata is based upon three Maxim

1. Nemo belet bis vexari pro una et eadem causea (no man should be vexed twice for the same cause).
2. Interest reipublicae ut sit finis litium (it is in the interest of the state that there should be an end to a litigation).
3. Res judicata pro vertitate occipitur (a judicial decision must be accepted as correct).

Incorpus juris, also it has been stated Res Judicata is a rule of universal law pervading every well-regulated system of jurisprudence and is put upon two ground embodied in various maxims of the common law, the one public policy and necessity, which makes it to the interest of the state that there should be an end to litigation, the other maxim, to the individual that he should not be vexed twice for the same cause1.

The common law interpretation of res-judicata is based upon the idea that when a party litigant has brought his action to the point of final judgment, his cause "Cause of action" is considered to be "merged" in to the judgment if he is unsuccessful.

This has been taken to mean that the judgment is conclusive upon the issues presented, as well as on all those issues which might or should have been urged and that it therefore bars the retrying of any issues either in support of or in rebuttal to the principal claim2.

The rule of res judicata, based on the maxim nemo debit lis vexari pro una et endem causa, i.e., no one ought to be troubled twice for one and the same cause and interest rei publicaeut sit finis litium i.e., it is in the interest of the state that there should be an end of law suit. Thus the rule of res judicata is based on two principles, namely, public policy that is, there should be an end to litigation and secondly, to avoid hardship on the individual.

Res judicata means, "a thing adjudicated", that is, an issue that is finally settled by judicial decisions. The rule of res judicata as laid down in under section 11 of the CPC:-

"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 formal suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a court of 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"

Section 11 is in its term not exhaustive and is not the sole repository of the principle of application of res judicata. The doctrine of res judicata Or estoppel by record, is not a mere technical Doctrine, but it is a fundamental doctrine, of all courts based on the Twin principles - that there must be an end to litigation and, that man should not be vexed twice over for the same cause[1].

It will be sheer abuse of the purpose of the court to raise at each successive stage different pleas to protect the proceedings or to drive the party to multiplicity of proceedings. It would be fair and just that the parties raise all available relevant pleas in the suits of the proceedings when the action is initiated and the omission and thereof does constitute constructive res judicata to prevent rising of the same at a later point of time. Thereof it must be deemed that they are waived[2].

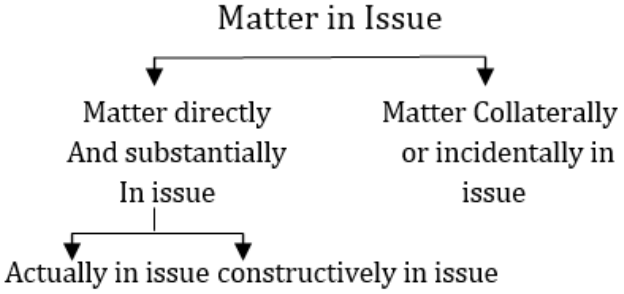
In a decision to put forth of Canvassa plea of res judicata, the opposite party has got a right to say that the decision relied on for the purpose of res judicata is a decision obtained under fraud and if he can establish that fact, the decision cannot be used for the purpose of invoking the doctrine of res judicata.

Res Judicata literally means a "thing adjudicated" or an issue that has been definitely settled by judicial decisions.

Black's law dictionary 8th edition the principle operates bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and substantially has arisen in the formal suit between the same parties and was decided and has become final.

So that the parties are not vaxed twice over vexation litigation is put on end to and valuable time of the court is saved. In the Case –Sulochanna Amma versus Narayanan Nair[3].

In this case in court care about the matter in issue the expression "matter in issue means the right litigated between the parties, that is the facts on which the right is claimed and the law applicable to the determination of that issue. Related case also about the matter in issue - Mathura Prasad versus Dossibai N. B. Jeejeebhoy[4], such issue may be an issue of fact, issue of law on mixed issue of law and fact.



For example: 'A' issues 'B' for possession of certain properties on the basis of a sale deed in his favour. B impugns the deed as fictitious. The plea is upheld and the

suit is dismissed 'A' subsequent suit for some other properties on the basis of the same sale Deed is barred as the issue about the fictitious nature of the sale deed was actually in issue in the formal suit directly and substantially.

As rightly observed by Somervell, L. J – I think that…it would be accurate to say that res judicata is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

In Case – Green Balgh versus Mallard[1].

Res judicata and Rule of law

The doctrine of res judicata is of universal application in the leading case of (Daryao vs State of UP2).

The Supreme Court has placed the doctrine of res judicata on a higher footing, considering and treating the binding character of judgments pronounced by competent courts as an essential part of the rule of law. In that case, the petitioners had filed writ petition in the High Court of Allahabad under article 226 of the constitution for the issue of a writ of certiorari to quash the said judgment. Before the said petition was filed a full bench of the Allahabad High Court had already interpreted section 20 of the UP land reforms act as amended by Act XVI of 1953. The effect of the said decision was plainly against the petitioner's contentions and so the learned advocate who appeared for the petitioners had no alternative but not to press the petition before the High Court. In consequence, the said was dismissed on March 14th 1956 thereafter, they filed substantive petition in the Supreme Court under article 32 of the Constitution for the same relief and on the same ground. The respondent raised a preliminary objection regarding maintainability of the petition by contending that the prior decision of High Court would operate as res judicata to a petition under article 32. The Supreme Court upheld the contention and dismissed the petitions and argued that, every then right to make a petition under the article 32, but it merely gives him the right to move this court by appropriate proceedings.

The expression "appropriate proceedings used in article 32(1) has reference to proceedings, which may be appropriate having regard to the nature of the order, direction, writ which the petitioner seeks to obtain from this court.

Speaking for the constitutional bench, Gajendra Gadkar J – the rule of res judicata merely a technical role or is it based on high public policy.

If the rule of res judicata itself embodies a principle of public policy with in turn is an essential part of the rule of law.

In considering the essential elements of res Judicata one inevitably harks back to the judgment of Sir William de grey, in the leading case - Duchess of Kingston, said Sir William de Grey, "from the variety of cases relative to judgments being given in evidence in civil suits these two deduction seems to follow as generally true –

1. That judgement of a court of concurrent jurisdiction, directly upon the point, is, as a plea, a bar, or as evidence conclusive, between the same parties, upon the same matter directly in question in another court.
2. That the judgment of a court to exclusive jurisdiction, directly on the point is in like manner, conclusive upon the same method, between the same parties, coming incidentally in question in another court, for a different purpose.

Res-Judicata and Writ Petitions

In M. S. M. Sharma vs. Dr. Shree Krishna1, First time, the Supreme Court held that the general principle of res judicata applies in writ petition. Thus, if once the petition filed under article 32 of the constitution is dismissed by the court, subsequent petition is barred. The question of applicability of the principle of res judicata in writ petition and laid down certain principles which are:

1. If a petition under article 226 is considered on the merits as a contested matter and is dismissed, the decision would continue to bind the parties unless it is otherwise modified or reserved by appeal or other appropriate proceedings permissible under the constitution.
2. It would not be open to a party to ignore the said statement set a judgment and more the Supreme Court under article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.
3. If the petition under article 226 in a High Court is dismissed not on the merits but because of Laches of the parties applying for the writ, or because it is held that the party had an alternative remedy available to it, the dismissal of the writ petition.
4. If the writ petition is dismissed in limineand on an order is pronounced in that behalf whether or not thedismissal would constitute a bar would depend on the nature of the order. If the order is on merits, it would be a bar.
5. The doctrine of constructive res judicata applies to writ proceedings and when any point which might and ought to have been taken but was not taken in an earlier proceedings cannot be taken in a subsequent proceedings.
6. The rule of constructive res judicata does not apply to a writ of habeas corpus. Therefore, even after the dismissal of one petition of habeas corpus, a second petition is maintainable if fresh, new or additional ground are available.
7. If a practitioner with withdraws the petition without the leave of the court to Institute a fresh petition on the same subject matter, the fresh petition is not maintainable.

Res judicata and lispendens

Section 52 of the transfer of property act 1882 which in enacts the doctrine of lispendens.

The doctrine of lis pendens is only one aspect of the rule of res judicata. Whereas the principle of lis pendens is that an alienee pendent lite is bound by the outcome of the litigation, the rule of res Judicata relates to matters which have passed into rem judicatam.

Where a conflict arises between the doctrine of res judicata and lis pendens, the former will prevail over the latter.

In other words, once a judgment is duly pronounced by a competent court in regard to the subject matter of the suit in which the doctrine of lis pendens applies the said decision would operate as res judicata and would bind not only the parties there to but also the transferees pendens lite.

For example, ‘A’ files are suit against ‘B' for declaration that he is the owner of the suit property. During the pendency of the suit ‘B' transfer property to ‘C'. The doctrine of lispendens will apply to such transfer, if a decree is passed in favour of ‘A', ‘C' cannot claim title over ‘A'.

Estoppel and Criminal Proceeding under Section 300(1)

Section 300(1) of the code of criminal procedure, 1973, declares that, a person who has once been tried by a coat competent jurisdiction for an offense and convicted or acquitted of such offense shall, while such conviction or acquittal remains in force not be liable to be tried again for the same offense nor on the same facts of for any other offense.

Proceedings Stabbed Under Section 258

In section 258 it is provided that when the proceeding are stopped after the evidence of principal weaknesses has been recorded the Magistrate shall pronounce the judgment of acquittal and in any other case, release the accused the release has the same effect as discharge. It is set law, if the proceeding has been stopped after recording the statement of principal witness, the second trial would be barred.

Article 20(2) of the Constitution and section 300 of Cr. PC

Article 20(2) clearly uses the word ‘and’ in a conjunctive sense and it is only where the accused was been both prosecuted and punished for the same offense that a second trial is barred. The article is based upon the principle of ‘double jeopardy' clause and lays down that no person should be put in jeopardy of his life or Labour more than once. The intention of the founding fathers appears to have been not to disturb the existing law which is to be found in section 300 of the code of criminal procedure relating to the extent of protection against 'double jeopardy' in criminal law of this country. The principles of section 300 have now been incorporated in Article 20 of the constitution. The defense of *autrefois convict,* however, has no application under Article 20 where the accused person was not lawfully convicted at the first trial because the court lacked jurisdiction. The article applies when the second offense is for the same offense for which the accused was previously tried. The person in order to get benefit must be tried for an offence. If a person is found in possession of different sets of counterfeit labels on different occasions and different places, it cannot be said that second prosecution is in respect of another set of counterfeit coins is barred by provision of Article 20(2) or section 300 or Cr. P. C. Section 300 is more comprehensive in its scope than article 20 (2). Article 20 (2) bars the retrial of a person for the same offence when he has been convicted and sentenced for the same offense whereas section 300 (1) specially incorporates the principal which gives effect to the pleas *autrefois acquit* as well as of *autrefois* convict. Under section 300 (1), even if a person who has been acquitted in a previous trial by a competent court, he cannot be tried again for the same offense.

Res Judicata and issue estoppel

The rule of issue estoppel is not the result of any enactment. It has been borrowed from English decision, named the case, Sambasivaman vs public prosecutor in the year of 1956. Sambasivaman, lndian Tamil, was travelling on foot in company of two Chinese. They met a party of three Malayas. A fight ensued between the two groups in the course of which one of the Chinese was killed. Malayas alleged that they had been fire on by the Chinese and that the appellant Sambasivam had with him a revolver which he had held out and pointed at one of them. In connection with this incident, the appellant was charged with carrying a firearm and being in possession of ten rounds of ammunition. Two charges were framed against the applicant (i) of carrying firearms, and (ii) of being in possession of ammunition. He was acquitted of the second charge of being in possession of ammuniation and that acquittal became final. He was later convicted of offense of carring of a firearm. An appeal was preferred before the Privy councils and an objection was raised that the witnesses who spoke of the revolver being carried by the appellant had been disbelieved in the earlier case on the point and so their testimony was not relevant. Their Lordships allowed the appeal on the ground that this evidence regarding the revolver being loaded of the appellant carrying a bag containing some bullets was inadmissible in law. In dealing with this, the court said that the effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial was not completely stated by saying that the person acquitted could not be tried again for the same offense. To that to that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The Maxim *'res judicata proveritate accipitur'*is no less applicable to criminal then to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial. The rule of law laid down above was for the first time followed in India. After that, it has been consistently followed and has become the law of the country. The rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding of fact has been reached in favour of the accused, such a finding would constitute and estoppel or res judicata.

The rule of is estoppel prevent relitigation of the of the issue which has been determined in a criminal trial between the state and the accused. In order to apply the principle of issue of estoppel, the parties must be same in both the trials and fact in the issue proved or not in the earlier one also must be identical with what is sought to be reagitated in the subsequent trial.

Res Judicata and Estoppel can be summed up as

1. The rule of rest judicata is based on public policy i.e., it is to the interest of the state that there should be an end to litigation, and belongs to the province of procedeure. Estoppel, on the other hand, is a part of the law of evidence and proceeds on the equitable principle of altered situation,*viz*., that he who, by his conduct, has induced another to alter his position to his disadvantage, cannot turn around and take advantage of such alteration of the other’s position.
2. Res judicata precludes a man from avowing the same thing in successive litigations, while estoppels prevents a party from saying two contradictory things at different times.
3. Res judicata is reciprocal and binds both the parties,

while estoppel binds the party who made the previous statement or showed the previous conduct.

4. Res judicata prohibits the court from entering into an enquiryat all, as to a matter already adjudicated upon; estoppel prohibits a party, after the enquiry has already been entered upon, from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who, relying upon those declarations or acts, has altered his position.
5. Res judicata ousts the jurisdiction of the court, while estoppel shuts the mouth of a party. Res judicata results from a decision of the court, while estoppel results from the act of the parties themselves.

Res judicata and previous judgement relevant to bar a second suit or trial

Res judicata is also support to estoppel of a second cognizance of such suit to hold such trial, the existence of previous judgment or order is relevant. Section 40 of the evidence act, that lays down that, when once there has been a judgment about a fact and the law provides that when there has been such a judgment, no subsequent proceedings would be stated, the previous judgment relevant and can be proved.

Heard and finally decided

The expression – "heard and final decided" means a matter on which the court has exercised it judicial exercise its judicial mind and has after argument and consideration came to a decision on a contested matter. It is essential that it should have been heard and finally decided.

A matter can be said to have been heard and finally decided notwithstanding that the formal suit was disposed (i) ex parte (ii) by failure to produce evidence (order 17 rule 3) (ii) by a decree on an award IV by oath tendered under Indian oaths Act 1873. But if the suit is dismissed on a technical ground, such as non-joinder of necessary party, it would not operate as Res judicata.

Technical point of Res Judicata

No doubt, the rule of res judicata has some technical aspects. The rule of constructive res judicata is really technical in nature. Similarly, pecuniary or subjective subject wise competence of the earlier forum to adjudicate the subject matter or grant relief sought in subsequent litigation can be said to be technical.

But the principle on which the doctrine is founded rests on public policy and public interest. Thus, where a plaintiff or a defendant might or ought to have urges question in a formal suit, he would be stopped from rising the same question in a a subsequent suit either as an attack or as a defence if the other condition of res judicata are satisfied.

In absence of such doctrine, there would be no end to litigation. A rich malicious litigant may succeed in vexing his poor opponent by repetitive suits and actions resulting in relinguishing his rights. Such situation must be prevented the principle of res judicata seeks to promote honestly and fair administration of justice and to prevent abuse of process of law.

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