

Gujarat State Judicial Academy



*Introduction and
Implementation of the
principle of “Res Judicata”
on Dais*

READING MATERIAL BY :

**GUJARAT STATE JUDICIAL ACADEMY
HIGH COURT OF GUJARAT, SOLA,
AHMEDABAD.**

GUJARAT STATE JUDICIAL ACADEMY



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PREAMBLE

'*Res judicata*' pro veritate accipitur" is the full latin maxim which has, over the years, shrunk to mere '*Res judicata*'.

The concept of '*Res judicata*' finds its evolvement from the English Common Law system, being derived from the overriding concept of judicial economy, consistency, and finality. The doctrine of '*Res judicata*' is based on three maxims.

a) *Nemo debet lis vexari pro eadem cause.*

(no man should be vexed twice for the same cause)

b) *Interest republicate ut sit finis litium*

(it is in the interest of the state that there should be an end to a litigation); and

c) *Res judicata pro veritate occipitur*

(a judicial decision must be accepted as correct)

The justification for the common law rules of '*Res judicata*' has been debated extensively. In legal systems, this justification is usually based on two theories. First, it is in the general public interest to end disputes that have already been litigated by establishing the finality of judicial decisions. Lord Simon of Gaisdale expressed this idea.

"There is a fundamental principle of English law . . . generally expressed by a Latin maxim which can be translated: "It is in the interest of society that there should be some end to litigation . . ." Important though the issues may be, how extensive so ever the evidence, whatever the eagerness for further fray, society says: "We have provided courts in which your rival contentions have been heard. We have provided a code of law by which they have been adjudged. Since judges and juries are fallible human beings,

we have provided appellate courts which do their own fallible best to correct error. But in the end you must accept what has been decided. Enough is enough. And the law echoes: "res judicata, means the matter is adjudged." [The Amphyll Peerage Case [1977] A.C. (H.L.) 547 at 575-76 (U.K.).]

The second justification for Res judicata is the individual's right of protection from repetitive litigation. This rationale of Res judicata was formulated more than four centuries ago by Lord Coke in the Ferrer case [Ferrer v. Arden (1599) 77 Eng Rep. 263, 266, 6 Co. Rep. 7a (Eng.)]:

"Otherwise great oppression might be done under colour and pretence of law; for if there should not be an end to suits, then a rich and malicious man would infinitely vex him who hath right by suits and actions; and in the end (because he cannot come to any end) compel him (to redeem to his charge and vexation) to leave and relinquish his right."

The English jurist Andrews sums up the rationale and justification of Res judicata: The "principle of finality" is rooted in several inter-related policies. If a decision were not treated as final, many inconveniences would result: the dispute would continue to drag on; greater legal expense and delay would result; scarce "judge-time" would be spent re-hearing the matter; inconsistent decisions might follow; litigation would cease to be a credible means of settling disputes; finally, it would be a hardship on the victorious party if the first case were to be re-opened; the victor is entitled to assume that at the first action he was not merely attending a dress rehearsal for further performances.

Preserving the authority of courts to reach decisions which will be presumptively binding. These considerations of public policy and private justice apply most clearly to the general rule set out above of 'Res judicata'.

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QUESTIONNAIRE

1. What is 'Res Judicata'?

'Res Judicata' means "a thing decided". It is a common law doctrine meant to bar re-litigation of cases between the same parties in Court. Once a final judgment has been handed down in a lawsuit subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one will apply 'Res Judicata' to preserve the effect of the first judgment. This is to prevent injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. 'Res Judicata' does not merely prevent future judgments from contradicting earlier ones, but also prevents them from multiplying judgments, so a prevailing plaintiff could not recover damages from the defendant twice for the same injury.

2. What is provided in adjective law to implement the principle of 'Res Judicata'?

Section 11 of the Code of Civil Procedure embodies the doctrine of 'Res Judicata' or the rule of conclusiveness of a judgment, as to the points decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. In the absence of such a rule there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses.

Section 11 of the Code of Civil Procedure, 1908 defines Res Judicata as:

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.

Explanation I: The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II. For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III. The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV. Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V. Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI. Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII. The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

3. What are the main pre-requisites to implement the principle of 'Res Judicata'?

The pre-requisite which are necessary to implement the principle of "Res Judicata" are:

- 1) There must be a final judgment;
- 2) The judgment must be on the merits;
- 3) The issue must be the same in the first and second suits;
- 4) The parties in the second action must be the same as those in the first, or the successor-in-interest of a party to the prior action.

4. What is 'Constructive Res Judicata'?

In a recently reported decision [Ramchandra Dagdu Sonavane (Dead) by L.Rs. v. Vithu Hira Mahar (Dead) by LRs. & Ors., AIR 2010 SC 818], Hon'ble Supreme Court has explained the doctrine of constructive res judicata as applicable in Indian law. A sub-set of the doctrine of res judicata, emanating from Section 11 of the Code of Civil Procedure, the doctrine of constructive res judicata sets to naught any claims being raised in a subsequent proceeding where in an earlier proceeding such claim should /

ought to have been raised and decided. As a rule of prudence, thus, the doctrine seeks to bar determination and enforcement of claims which have not been raised at an appropriate juncture in judicial proceedings.

Hon'ble Supreme Court explained the meaning and ambit of the doctrine of constructive res judicata as under;

"It is well known that the doctrine of res-judicata is codified in Section 11 of the Code of Civil Procedure. Section 11 generally comes into play in relation to civil suits. But apart from the codified law, the doctrine of res-judicata or the principle of the res-judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res-judicata is engrafted in Explanation IV of Section 11 of the Code of Civil Procedure and in many other situations also Principles not only of direct res-judicata but of constructive res-judicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res-judicata and bars the trial of an identical issue in a subsequent proceedings between the same parties. The Principle of res judicata comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the Principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, is deemed to have been constructively in issue and, therefore, is taken as decided."

5. What is main distinction between the doctrine of 'Res Judicata' and the rule embodied in Order II Rule II of the C.P.Code?

Both the doctrine of Res judicata and rule embodied in O-2, R-2 are based on the rule of law that no man shall be vexed twice for one and the same cause.

From the bare reading of both the provisions following important distinction between doctrine of Res judicata and the rule embodied in O-2, R-2 of C. P. Code clearly come out.

Looking to the provision of O-2, R-2 of C. P. Code its become clear that O-2, R-2 of C. P. Code is based on the salutary principle that a defendant should not be twice vexed for the same cause by splitting the claim and the relief, to preclude the plaintiff from so doing it is provided that if he omits any part of the claim or fails to claim a remedy available to him in respect or that cause of action he will thereafter be precluded from so doing in any

subsequent litigation that he may commence if he had not obtained the prior permission of the court, but rule does not preclude a second suit based on a distinct cause of action.

On other hand principle of Res judicata only applies to the subsequent suit in such circumstances when a competent court has decided the former suit between same parties on the same point of issue. [Inacio Marrins V/s. Narayan Hari reported in AIR 1993 SC 1756]

6. What is main difference between 'Estoppel' and 'Res Judicata'?

It has been said that the doctrine of Res Judicata is one kind of estoppel. Before few years it was recognized as "Estoppel by Judgment" or "Estoppel by records". Both the doctrines can define in single sentence: estoppel means "once admitted can not be denied" and Res-judicata means "once decided cannot be re-decide". For the first time the rule of Estoppel was laid down in the well known case of Pickard v/s. Sears in 1832. In that case their Lordship had observed the principle of Estoppel that Where one by his words or conduct willfully causes another to believe in the existence of a certain state of things and induces him to act on that behalf so as to alter his own previous position, the former is concluded from averring against the later a different state of things as existing at the same time.

From one angle the doctrine of Res judicata seems to be a branch of the law of estoppel. Hon'ble Allahabad High Court, Madras High Court and Patna High Court have already decided that Res Judicata is a branch of estoppel. (A.I.R. 1960 Mad. 377, A.I.R. 1939 Pat. 633, A.I.R. 1950 All. 225). While from other angle it seems to be different. Hon'ble Calcutta High Court, Hon'ble Patna High Court and Hon'ble Madras High Court [AIR 1942 Cal. 93, AIR 1922 Pat. 63, AIR 1947 Mad. 5] have held that the Res Judicata results from a decision of a Court and estoppel results from the acts of parties themselves. The Res Judicata proceeds on the ground of public policy while the rule of estoppel proceeds upon the doctrine of equity.

The doctrine of Res Judicata no doubt resembles the doctrine of estoppel in some respect, but the following are material differences between two.

The main distinction between them is the doctrine of res judicata differs from estoppel chiefly in not resulting from an act of party himself but from a decision of the court. In other words, Res judicata results from a decision of the court and estoppel flows from the acts of parties.

Other important things are that, Res judicata ousts the jurisdiction of the court while estoppel does not affect except to shut the mouth of a party.

The rule of Res judicata is based on public policy, viz. that there should be an

end to litigation, estoppel on other hand proceeds upon the doctrine of equity, that he who, by his conduct, has induced another to alter his position to his disadvantage, cannot turn round and take advantage of such alteration the other's position. In other words, while Res judicata bars multiplicity of suits.

Res judicata prohibits a man averring the same thing twice in successive litigation, while estoppel prevents him from saying one thing at one time and the opposite at another.

The rule of Res judicata presumes conclusively the truth of the decision in the former suit, on other hand, the rule of estoppel prevents a party from denying what he had once called the truth.

[As per Sita Ram V/s. Amir Begam - ILR 1986 ALL 324].

7. Whether the principle of 'Res Judicata' affects the jurisdiction of the court and if the order passed by a court without jurisdiction can operate as 'Res Judicata'?

Hon'ble Apex Court had an occasion to come across with such question in which it has been held that "an order passed without jurisdiction would be a nullity. It will be a coram non-judice and non-est in the eye of the law. Principle of Res Judicata would not apply to such cases.

Union of India and others V/S Association of Unified Telecom Service Providers of India and Ors [reported in 2011 (10) SCC 543]

Chief Justice of A. P. v/s. L.V.A. Dixitulu [reported in 1979 (2) SCC 34]

Union of India v/s. Pramod Gupta [reported in 2005 (12) SCC 1]

National Institute of Technology v/s. Niraj Kumar Singh [reported in 2007(2) SCC 481]

8. Whether the principle of 'Res Judicata' applies to foreign judgment and what will be the effect of that judgment if it is obtained by fraud?

The Code of Civil Procedure provides that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except -

- a) Where it has not been pronounced by court of competent jurisdiction;
- b) Where it has not been given on the merits of the case;
- c) Where it appears on the face of the proceeding to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;

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- d) Where the proceeding in which the judgment was obtained or opposed to natural justice;
 - e) Where it has been obtained by fraud;
 - f) Where it sustains a claim founded on a breach of any law in force in India

It has been held by Hon'ble Apex Court in the case of "Sankaran Govindan v/s. Lakshmi Bharathi" [reported in AIR 1974 SC 1764] that:

"It is a well established principle of private international law that if a foreign judgment was obtained by fraud, or if the proceedings in which it was obtained were opposed to natural justice, it will not operate as res judicata. An action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely that on the merits the decision was one which should not have been rendered, but it can be set aside if the Court was imposed upon or tricked into giving the judgment. A foreign judgment is impeachable for fraud in the sense that upon proof of fraud it cannot be enforced by action or operate as res judicata. The fraud relied upon must be extrinsic or collateral and not merely fraud which is imputed from alleged false statements made at the trial which were met with counter-statements and the whole adjudicated upon by Court and so passed into the limbo of estoppel by the judgment. That estoppel cannot be disturbed except upon allegation and proof of new and material facts which were not before the former Court and from which is to be deduced the new proposition that the former judgment was obtained by fraud. The fraud which vitiates a judgment must generally be fraud of the party in whose favour the judgment is obtained."

9. Whether a decision of a criminal court operates as 'Res Judicata' in a subsequent civil proceeding?

It has been held by Hon'ble Apex Court in the case of "Adi Pherozshah Gandhi v. H. M. Seervai, Advocate General of Maharashtra, Bombay" [reported in AIR 1971 SC 385] that.....

"Now in disciplinary proceedings the advocate was not estopped from questioning the charge that he was guilty of corrupt practice. In a civil proceeding the decision of a criminal court is not res judicata. To give an example, if a person is involved in a traffic offence in which some one is injured he may in the criminal court receive a light sentence but if he is sued in a civil court for heavy damages he can plead and prove that he was not negligent or that accident was due to the contributory negligence of the defendant. The decision of the criminal court would not preclude him from raising this issue before the civil court."

10. Whether the principle of 'Res Judicata' operates between co-plaintiffs or co-defendants?

It has been held by Hon'ble Apex Court in the case of "Iffikhar Ahmed v. Syed Meharban Ali" [reported in AIR 1974 SC 749] that

The rule of res judicata while founded on ancient precedent is dictated by a wisdom and the application of the rule should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law. The *raison d'etre* of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest.

"It is now settled that for a judgment to operate as res judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between the co-defendants (2) that it was necessary to decide the conflict in order to give relief which the plaintiff claimed; and (3) that the Court actually decided the question. If thus a previous decision can operate as res judicata between the co-defendants under certain conditions, there is no reason why a previous decision should not operate as res judicata between the co-plaintiffs if the same conditions are *mutatis mutandis* satisfied."

11. Whether the principle of 'Res Judicata' applies to matrimonial proceedings?

The principles of res judicata is applicable to matrimonial proceedings also. When the former suit for divorce on the ground of desertion and cruelty failed, the subsequent suit on the same grounds is barred by principle of res judicata. But, if any new cause of action has been arisen after previous decision then principle of 'Res Judicata' may not apply.

"G. Vijay Laxmi Vs. G. Ramchandra" [reported in AIR -1981 -SC- 1143]

12. Whether the principle of 'Res Judicata' applies to the proceeding under The Motor Vehicle Act?

It is elaborated in case of Prakash Chandra Biswas V. New India Assurance Co. Ltd. & Anr. [reported in AIR 2010 Calcutta 19] that the principle of Res judicata also applies in Motor Accident Claim cases. It has been held that when award passed under Section-140 of the M. V. Act and no appeal preferred either by owner or insurer against such award, then the question of involvement of the vehicle can not again be re-opened in proceedings u/s. 166 of the Act at instance of either owner or insurer.

13. Whether the principle of 'Res judicata' applies to the decisions taken by Administrative or Executive Authorities?

Principle of res judicata is not applicable to administrative decisions taken by executive authorities. Such decisions are not binding to Courts. It has been held by Apex Court in case of State of West Bengal V. Subhas Kumar Chatterjee & Ors. [reported in AIR 2010 SC 2927] that "a Chief Engineer not acting in any judicial or quasi-judicial capacity, view taken by him in a matter directed to him by 'Administrative Tribunal' that respondents were entitled to particular pay scale, is not a decision as there was no adjudication as such of any lis between parties and therefore, his decision can not operate as Res judicata. It may create Estoppel against that particular authority."

14. Whether the principle of 'Res Judicata' applies to Writ Petitions?

In the case of " Pujari Bai V/s. Madan Gopal" [reported in AIR-1989 -SC - 1764], it has been held that general principles of res judicata would apply to writ proceedings. But when a writ petition is disposed of on contest by a speaking order, it operates as res judicata. When it is dismissed on the ground of availability of alternative remedy the finding in such earlier writ petition does not operate as res judicata in the subsequent writ petition.

15. Whether the principle of 'Res Judicata' applies to Habeas Corpus Petitions?

The question relating to res judicata in habeas corpus petition was considered by Hon'ble Apex Court in several cases. It has been held by Hon'ble Apex Court in case of Srikant Vs. District Magistrate, Bijapur & Ors [reported in 2007(1) SCC 486] that, this principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus on fresh grounds, which were not taken in the earlier petition for the same relief. Whether any new ground has been taken, has to be decided by the Court dealing with the application and no hard and fast rule can be laid down in that regard. But one thing is clear, it is the substance and not the form which is relevant. If some surgical changes are made with the context, substance and essence remaining the same, it cannot be said that challenge is on new or fresh grounds.

16. Whether the principle of 'Res Judicata' applies to the proceedings under The Indian Succession Act?

A Judgment of probate Court granting probate of a will in favour of the Petitioner is presumed to have been obtained in accordance with the procedure prescribed by law and it is a judgment in rem. Therefore, the

judgment of the competent probate court is final so far as the execution of the will and the matter can not be re-opened in the Civil Court in any subsequent suit. Obviously, the question of title of the testator of the will can not be decided in proceedings for the grant of probate or letters of administration and therefore, if the question of title of the testator raises in subsequent civil suit, it may be adjudicated by that Court. ["Darshansingh Vs. Kuldeepsingh" (reported in AIR - 1979 (Punjab) -250)].

17. Whether the principle of 'Res Judicata' applies when the suit is dismissed for default?

It is well settled now that the principle of Res judicata only operates when a case heard and finally decided on merits. The order of 'dismissed for default' does not attract any merit of the case and hence, it can not be said a decision on merit and any action can not be taken by applying the principle of Res judicata.

When any suit is decided on merit and the appeal against such decision has been dismissed for default, the decision of Trial Court becomes final and therefore, that decision shall be operate as Res judicata. [Ram Gobinda Dawan and ors. v/s. Smt. Bhaktabala (reported in AIR 1971 SC 664)].

18. Whether the principle of "Res Judicata" applies to proceedings under Sec. 11 of the Arbitration and Conciliation Act, 1996?

There can be no hard and fast Rule to answer this question particularly in Arbitration matters, but it is equally well founded by series of rulings that the same issue between the same parties which was decided earlier by Competent Court, can not be re-decide in subsequent litigation between the same parties. Hon'ble Apex Court has held in case of Indian Oil Corporation Ltd. V/s. SPS Engineering Ltd. [reported in 2011 (3) SCC 507] that the Arbitration Proceedings mainly depends upon the Contract between parties. If it transpires from the contract that there is no bar to claim extra cost then the designate has no jurisdiction to dismiss the application filed under Section-11 of the Arbitration and Conciliation Act to appoint Arbitrator on the ground that the claim for extra cost was barred by 'Res Judicata' even when the question of damages has been already decided by earlier Arbitration appointed for the same parties.

19. Whether the principle of "Res Judicata" applies to the execution proceedings?

In view of Explanation VII to Section 11 of the Code of Civil Procedure, the principles of Res judicata applies to the execution proceedings. The Explanation reads as under:

Explanation VII : The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

20. Whether the principle of "Res Judicata" applies to Public Interest Litigations?

The principle of Res judicata does not apply strictly to Public Interest Litigation because procedural laws are not fully applicable to Public Interest Litigation cases. Where the prior Public Interest Litigation relates to illegal mining, subsequent Public Interest Litigation to protect environment is not barred. [Rural Litigation and Entitlement Kendra V/s. State of Uttar Pradesh reported in 1988 AIR(SC) 2187].

Section-11 Explanation VI of C. P. Code applies to Public Interest Litigation as well, but it must be proved that the previous litigation was Public Interest Litigation and not by way of private grievances. It must be a bonafide litigation in respect of a right in common and it must be agitated in common with others. Owners of proving the want of bonafide in respect of the previous litigation is on the party seeking to avoid the previous decision. (Forward Construction Co. V/s. Prabhat Mandal (reported in 1986 AIR(SC) 391)).

21. Whether on a pure issue of law, the principles of "Res Judicata" applies or not?

Looking to the views taken by Hon'ble Apex Court regarding the issue, since 1952, one may find divergence of opinion transpires from those decisions:

Hon'ble Apex Court has held in case of MOHANLAL GOENKA V/S. BENOY KISHNA MUKHERJEE (1953 AIR(SC) 65) that

"There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'. A decision in the previous execution case between the parties that the matter was not within the competence of the executing court even though erroneous is binding on the Parties." (PARA-23)

It has been held by Hon'ble Apex Court in case of M L SETHI V/S R P KAPUR (1972 (2) SCC 427) that

"It is a bit difficult to understand how an erroneous decision on a question of limitation or res judicata would oust the jurisdiction of the Court in the

primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack." (PARA-11)

In 1989, a Division Bench of Hon'ble Supreme Court in case of SUPREME COURT EMPLOYEES WELFARE ASSOCIATION V/S UNION OF INDIA (1989 (4) SCC 187) has held that

"A decision on an abstract question of law unrelated to facts which give rise to a right, cannot operate as res judicata -- A decision on the question of jurisdiction, cannot be res judicata in subsequent suit or proceedings, but if the question of law is related to the facts in issue, an erroneous decision on such a question of law may operate as res judicata in a subsequent suit between the suit parties."

It has been held by Hon'ble Apex Court in case of ISABELLA JOHNSON V/S M A SUSAI (1991 (1) SCC 494) that.....

"In our opinion a court which has no jurisdiction in law cannot be conferred with the jurisdiction by applying principles of res judicata. It is well settled that there can be no estoppel on a pure question of law and in this case the question of jurisdiction is a pure question of law." (PARA-6)

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