

## RES JUDICATA AND RES SUB-JUDICE

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### ABSTRACT

The Civil Procedure Code, 1908 was endorsed with a view to have an unwavering civil procedure in all the courts. The code also contains doctrines, and not only provisions and rules, which are to be applied in every case to ensure the proper functioning of judiciary so that the people's faith and trust, in judiciary and its functioning, remains unhindered. The doctrine of res judicata and res sub-judice shall be strictly applied for the smooth functioning of the judiciary. The civil suits either pending or decided should not be instituted again in any court and trial for the suit should not be conducted. Double institution of suits either on a pending or decided matter will create a chaotic environment as the judgements passed by different courts and judges won't be the same. This paper attempts to analyse the doctrine of res judicata and res sub-judice and provides the reason for the necessity application of these doctrines effectively and strictly.

**Keywords:** Doctrines, Res Judicata, Res sub-judice, Judiciary.

## INTRODUCTION

The doctrine of res judicata is given under section 11 of the Civil Procedure Code. It is a phrase in Latin which means ‘a thing decided’. The Supreme Court of India in the case of Lal Chand v. Radha Krishnan<sup>i</sup> stated that once the last judgement given in a suit, the ensuing judges who are confronted with a suit which identically same as the previous judgement, they would apply the Res Judicata precept 'to save the impact of the main judgment. It was a way to ensure that a similar case cannot be taken up again either in distinctive or in equivalent Court of India. This is simply to make sure that a common offended party may not recuperate harms from the respondent twice for similar damage.

The doctrine of res judicata has been explained by Das Gupta, J in the case of Satyadhyan Ghosal v. Deorjin Debi<sup>ii</sup>

*“The principle of res judicata is based on the need of giving finality to judicial decisions. What it says is that once a res is judicata. It shall not be adjudged again. Preliminary it applies as between past litigation and future litigation. when a matter whether on a question of fact or a question of a decision is final, either because no appeal was taken on higher court or because the appeal was dismissed, or no appeals lies, neither party will lie, neither part will be allowed in future suit bar proceeding between the same parties to canvass the matter again.”*

The doctrine of res sub-judice is given under section 10 of the Civil Procedure Code. In Latin sub judice means ‘under judgement’. The doctrine of res sub-judice is to restrict a plaintiff to one litigation and to preclude the possibility of two contradictory judgments by one and the same court in respect of the same relief.<sup>iii</sup> The objective is to preclude the trial of parallel cases between the same parties simultaneously in the courts of concurrent jurisdiction and to avoid the conflicting decisions of two competent courts over the same matter and also to save the time of the court.

## MEANING AND CONCEPT

Doctrine of res judicata is based on the finality of judgement delivered by the court. If the suits keep failing for the same cause of action, there will be no end to the ever-growing number of cases which will end up making a lot of confusion and disorder. Res judicata consists of two words 'res' and 'judicata'. 'Res' means 'thing' and 'judicata' means 'already decided'. It is a Latin term for 'a thing already decided'. It can be subjected to both civil and common law for a case for which a final judgement has been pronounced and is subject to no further appeal.

The doctrine of res judicata is used as means to 'bar re-litigation' of cases between the same parties which is different between the two legal systems. Once a suit for which a final judgement has been announced, the judges who will subsequently be facing the suit which is identical or substantially the same as the earlier one, would apply the doctrine of res judicata to uphold the effect of the first judgement. This is to ensure that no injustice is caused to the parties of a case supposedly finished, but mostly to circumvent unnecessary waste of resources and time of the judicial system.

'Section 11. Res judicata - 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.'

Res sub judice is a Latin maxim which cannot be found in the code of civil procedure. Res sub judice refers to a matter pending trial and operates as a bar to a trial of a suit which is pending decision in a previously instituted suit.<sup>iv</sup> The doctrine therefore bars a trial on some conditions but doesn't prevent the filing of a new suit. A similar rule is contained in section 10 of the Code of Civil Procedure.

"Section 10. Stay of Suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction

to grant the relief claimed, or in any court in India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Thus, the doctrine's use is to prevent the trial of two parallel suits on the same issue in different courts to avoid different conflicting decisions.

## **THE ORIGIN AND THE HISTORICAL BACKGROUND OF RES JUDICATA AND RES SUB-JUDICE**

The full maxim which is, 'Res judicata Pro Veritate Accipitur', has over the course of time been abbreviated to just 'res judicata'.<sup>v</sup> The doctrine has evolved from the English Common Law System. Subsequently, it was added to the Code of Civil Procedure. A defendant, under the Roman Law, could efficaciously challenge a suit filed by the plaintiff on the plea of 'ex captio res judicata' which means one suit and one decision is enough for any single dispute.

The doctrine is based on three Roman maxims: -

1. Nemo debet lis vexari pro eadem causa (no man should be vexed twice for the same cause).<sup>vi</sup>
2. Interest republicae ut sit finis litium (it is in the interest of the state that there should be an end to a litigation).<sup>vii</sup>
3. Re judicata pro veritate occipitur (a judicial decision must be accepted as correct).<sup>viii</sup>

Res judicata was identified in Hindu Law as 'Purva Nyaya' i.e. former judgement.<sup>ix</sup> In roman law it was stated as 'one suit and one decision are enough for any single dispute'. The doctrine of res judicata is accepted in the European Continent and the Commonwealth Countries.<sup>x</sup>

The principle sometimes had the tendency to work cruelly on people. For instance, when the previous decision of the court was clearly wrong. Nonetheless, its applicability was legitimized, as the rule says there must be an end to each litigation. The premise of the principle of res judicata is open intrigue and not absolute justice. In case of a wrong decision, "the suffering citizen must appeal to the law-giver and not to the lawyers".<sup>xi</sup> Res judicata is a species of the doctrine of estoppel.<sup>xii</sup>

Res sub-judice is a part of res judicata. Res sub-judice is a Latin term which is not mentioned anywhere in the Code of Civil Procedure. Res sub-judice alludes to an issue pending preliminary and works as a bar to a preliminary of a suit which is pending decision in a formerly founded suit.<sup>xiii</sup> Hence, the doctrine bars a preliminary on some conditions. A similar rule is found in Section 10 of CPC,1908. The heading of section 10 is 'stay of suit'. It doesn't work as a bar to the institution of the ensuing suit. It is just the preliminary of the suit that is not to be continued with.<sup>xiv</sup>

## CONDITIONS FOR RES JUDICATA

Several conditions must be fulfilled to constitute res judicata:

1. There must be two suits between same parties or their representative.<sup>xv</sup>
2. They should prosecute under a same title.
3. The matter directly and substantially in issue in both the suits must be related Or, the matter directly and substantially in issue in the ensuing suit should also be directly and substantially in issue in the previous suit.
4. . One of such suits more likely be heard and lastly decided (it is known as a previous suit). The doctrine of res judicata won't make a difference when the whole issue was still in appeal and had not achieved conclusiveness was still in debate.<sup>xvi</sup>
5. the court which chose the previous suit must be capable to concede relief asserted in the subsequent suit. the rule of res judicata won't have any significant bearing where order was passed without jurisdiction.<sup>xvii</sup>

## CONDITIONS OF RES SUB-JUDICE

There are three conditions which need to be fulfilled to bring into operation the doctrine of res sub-judice:

1. The matter in issue in the subsequent suit is directly and substantially in issue in the previously instituted suit,
2. The parties in the both suits are the same,

3. Both must be pending in courts in India or courts outside India established under the authority of Central Government.<sup>xviii</sup>
4. The court in which the first suit is instituted, is a court of having jurisdiction or competent to grant the relief claimed in the subsequently instituted suit.

## **RES JUDICATA AND ESTOPPEL**

The principle of Res judicata is usually viewed as a part of doctrine of estoppel.<sup>xix</sup> Res judicata is estoppel by judgement or estoppel by verdict.<sup>xx</sup> The rule of constructive res judicata is nothing but principle of estoppel.<sup>xxi</sup> But the doctrine of res judicata separates itself essential circumstances from the principle of estoppel.<sup>xxii</sup>

## **RES SUB-JUDICE AND LIS PENDENS**

Res sub-judice means there must not be two suits under trial simultaneously on the same subject between the same parties for the same cause of action in two different competent courts.

Lis pendens means during the pendency of any suit in any court which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose according to the Section 52 of the Transfer of Property Act, 1882.

To sum up, Lis pendens averts the sale of immovable property when the suit is under trial and Res sub-judice averts the running of multiple suits at the same time with same parties, subject matter and the same cause of action in different competent courts.

## **PURPOSE OF RES JUDICATA**

The key purpose of res judicata is to prevent:

1. Recuperation of the damages from the respondent twice for same damage.<sup>xxiii</sup>
2. Multiplicity of suit.<sup>xxiv</sup>
3. Injustice to a party of a decided suit.<sup>xxv</sup>
4. Unnecessary misuse of the resources of the court<sup>xxvi</sup>

## **PURPOSE OF RES SUB-JUDICE**

Section 10 defends a man from multiple procedures and to prevent a conflict of decisions. It furthermore defends the disputant people from irrelevant provocation. It additionally intends to avoid burden of the parties and offers effect to the principle of res judicata.<sup>xxvii</sup>

## **CONCLUSION**

The Indian Judiciary has some loopholes as a result of which disposal of justice gets slow and ineffective. Adding on to this, if we allow reinstatement of suits for the same matter or issue it will not only make the parties suffer but also waste the time and resources of the court. Therefore, to avoid the conflict of decisions of two competent courts and also to avert the re-institution of case already decided, the doctrine of res judicata and res sub-judice need to be implemented strictly and effectively in every such case. The doubtfulness in any proceeding leads to lack of trust and faith in the judiciary and the society.

## ENDNOTES

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- <sup>i</sup> Lal Chand v. Radha Krishnan (1977) 2 S.C.C. 88 (India).
- <sup>ii</sup> Satyadhyan Ghosal v. Deorjin Debi A.I.R. 1960 S.C. 941 (India).
- <sup>iii</sup> Bal Kishan v. Kishan Lal (1889) ILR 11 ALL.
- <sup>iv</sup> C.K. TAKWANI, CIVIL PROCEDURE WITH LIMITATION ACT, 1963 68 (Abhinandan Malik, 8th ed.) 1983.
- <sup>v</sup> Deva Ram v. Ishwar Chand AIR1996SC378-; Kunjan Nair Shivaraman Nair v. Narayanan Nair, AIR 2004 SC 1761.
- <sup>vi</sup> C.K. TAKWANI, CIVIL PROCEDURE WITH LIMITATION ACT, 1963 68 (Abhinandan Malik, 8th ed.) 1983.
- <sup>vii</sup> Ibid
- <sup>viii</sup> Ibid
- <sup>ix</sup> C.K. TAKWANI, CIVIL PROCEDURE WITH LIMITATION ACT, 1963 68 (Abhinandan Malik, 8th ed.) 1983.
- <sup>x</sup> Lachhmi v Bhulli, A.I.R. 1927 Lah. 289 (India).
- <sup>xi</sup> Sheoparsan Singh v Ramnandan Singh, A.I.R. 1916 P.C. 78 (India).
- <sup>xii</sup> Ishwar Dutt v Land Acquisition Collector, A.I.R. 2005 S.C. 3165 (India).
- <sup>xiii</sup> C.K. TAKWANI, CIVIL PROCEDURE WITH LIMITATION ACT, 1963 57 (Abhinandan Malik, 5th ed.) 1983.
- <sup>xiv</sup> Maharashtra State Coop. Marketing Federation Ltd v Indian Bank, A.I.R. 1998 S.C. 1952 (India).
- <sup>xv</sup> SIR DINSHAW FARDUNJI MULLA, THE KEY TO INDIAN PRACTICE, 227 (Justice Surya Kant, 11th ed.) 1994.
- <sup>xvi</sup> Hameeda Begum v Champa Bai, A.I.R. 2009 N.O.C. 2693 MP-DB (India).
- <sup>xvii</sup> Chandrabai K. Bhoir v Krishna A. Bhoir, A.I.R. 2009 S.C. 1647: (2009) 2 S.C.C. 315 (India)
- <sup>xviii</sup> SIR DINSHAW FARDUNJI MULLA, THE KEY TO INDIAN PRACTICE, 233 (Justice Surya Kant, 11th ed.) 1994.
- <sup>xix</sup> Guda Vijayalakshmi v Guda Ramachandra, (1981) 2 S.C.C. 646 (India).
- <sup>xx</sup> V. Rajeshwari v T.C. Saravanabava, (2004) 1 S.C.C. 551 (India).
- <sup>xxi</sup> Batul Begam v Hem Chandar, A.I.R. 1960 All 519 (India).
- <sup>xxii</sup> Sita Ram v Amir Begam, I.L.R. 1886 (8) All 324 (India)
- <sup>xxiii</sup> Mahamud Wazed, Code of Civil Procedure: Res sub-judice & Res Judicata, RICHARD PRICE (Not Specified), [https://www.academia.edu/11204996/Code\\_Of\\_Civil\\_Procedure\\_Res\\_sub-judice\\_and\\_Res\\_Judicata](https://www.academia.edu/11204996/Code_Of_Civil_Procedure_Res_sub-judice_and_Res_Judicata).
- <sup>xxiv</sup> ibid
- <sup>xxv</sup> ibid
- <sup>xxvi</sup> ibid
- <sup>xxvii</sup> S.P.A. Annamalay Chetty v B.A. Thornhill, A.I.R. 1931 P.C. 263 (India).