RES JUDICATA

Section 11 of the Code incorporates the doctrine of *res judicata*. This doctrine is not merely a technical doctrine. It is a fundamental doctrine based on the principle of conclusiveness of the judgement and the finality of the litigation. “One suit and one decision is enough for any single dispute”. (McNaughten and Colebrooks). The ancient reference of Res Judicata came from the “Brihaspati Smriti” where it was known as Prangnayaya which means previous judgement.

**HISTORY:** 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. From the common law, it got included in the Code of Civil Procedure and which was later as a whole was adopted by the Indian legal system. From the Civil Procedure Code, the Administrative Law witnesses its applicability. Then, slowly but steadily the other acts and statutes also started to admit the concept of Res Judicata within its ambit.

**MEANING:** Res mean subject or a thing and judicata means decided. Thus *res judicata* means things decided. It provides that once a matter is finally heard and decided between the parties, such matter will not allow to be agitated among the same parties and earlier decision of the court will attach finality in respect of the matter decided. Under Roman law it is known as *ex captio res judicata* which signifies previous or former judgement. Res Judicata as a concept is applicable both in case of Civil as well as the Criminal legal system. The term is also used to mean as to ‘bar re-litigation’ of such cases between the same parties, which is different between the two legal systems. Once a final judgment has been announced in a lawsuit, the subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one, they would apply the Res Judicata doctrine ‘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 and time of the Judicial System. In *Satyadhyan Ghosal v. Deorijin Debi*\(^1\), the Supreme Court held that principle of *res judicata* is based on the need of giving finality to judicial decisions. Primarily it applies between past litigation and future litigation.

**Constitutional Validity:** In Employee Welfare Association v. Union of India\(^2\), the Apex Court observed that principle of Res Judicata is not a technical rule, it is a rule of public

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\(^1\) AIR 1960 SC 941  
\(^2\) AIR 1990 SC 334
policy. It is a universal law founded on the basis of justice, equity and good conscience to every well regulated system of jurisprudence. The doctrine of res judicata is a universal doctrine laying down the finality of litigation between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 14 of the Constitution. Either party cannot be permitted to allow to re-open the issue decided by such decision on the ground that such decision violates the equality clause under the constitution.

Object: The doctrine of Res Judicata is based on three maxims:-

1. *Interest Republicac ut sit finis litium* - It is in the interest of State that litigation should not be pronounced but finished.
2. *Nemo debet bis vexari pro una et eadem causa* - No man ought to be vexed twice for one and the same cause.
3. *Res Judicata pro veritate occipitur* - A judicial decision must be accepted as correct.

The Supreme Court in *Lal Chand v. Radha Krishnan*³, held that principle of res judicata is conceived in the larger interest that all litigation must, sooner than later, come to an end.

**Res Judicata in simpler form as defined under Section 11:**

Where a matter (matter is the main cause of action i.e. direct and substantial) is being agitated before a court (present or subsequent court) between two parties and if it is proved that the same matter was directly or substantially in issue in a previous suit in a court (previous or former court) of competent jurisdiction and the court has already heard (evidence taken) and decided (judgement pronounced) that matter, then the court in which it is currently instituted is barred to try the matter so agitated.

This feature is known as Res Judicata i.e. the matter is already adjudged therefore needs no re-adjudication.

Thus, the necessary ingredients are that,

- The matter in both the suits must be directly or substantially the same.
- The former and subsequent court must be competent to try such matter.

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³ (1977) 2 SCC 88
The parties to both the suits must be same in legal sense i.e. even if the parties are not exactly the same but whoever they are, they represent or are in character of the parties concerned in the previous suit.

The rule of res judicata is based on public policy and conclusiveness and finality of adjudication and thus prevents multiplicity of proceedings and possibility of existence of two findings regarding the same subject matter.

Explanation to Section 11:

I. Former suit means suit decided prior to the suit in question. It is immaterial whether the subsequent suit is instituted prior to the suit decided or not.

II. The competence of court shall not be determined upon the existence of a right to appeal.

III. The matter which is in question in a subsequent suit must be a matter in issue in former suit (it is also known as Direct Res Judicata).

IV. It is an artificial form of Res Judicata and provides that if a plea could have been taken by a party in a proceeding between him and his opponent, he should not be permitted to take that plea against the same party in a subsequent proceeding with reference to same subject matter (also known as Constructive Res Judicata).

V. Any relief claimed not expressly granted in decree shall be deemed to be refused and shall be barred in another suit by Res Judicata.

VI. Where the person is suing or being sued in respect of a public right or of a private right claimed in common for themselves and others, then all person interested in such right shall deemed to claim under persons so litigating (this provides for res judicata in Representative suit).

VII. Execution proceedings are covered under this section. Proceedings for execution of decree, question arising in execution proceedings and in former proceedings for execution shall deemed to be suit, issue and former suit respectively.

VIII. An issue heard and decide by a court of limited or special jurisdiction including pecuniary jurisdiction will operate as a Res Judicata in a subsequent suit or proceeding, even if such court of limited jurisdiction was not competent to try such subsequent suit.
Res Judicata is based on the principle of justice, equity and good conscience. It prevents the parties from a second determination even if the first is demonstrably wrong. When earlier proceedings had obtained finality, parties were bound by the judgement and were stopped from questioning the same. Rule of constructive res judicata is also based on the same principle.

Conditions for Application of Res Judicata:

1. Same parties i.e. litigating parties are same.
2. Matter directly and substantially in issue is same in former suit as well as subsequent suit.
3. Same title i.e. litigating under the same title in former suit.
4. Suit has been decide by a competent court.
5. Finally heard and decision.

Res Judicata between same Parties

Res judicata not only affects the litigating parties but also any person claiming under them. Therefore “same parties” includes their legal representatives or karta and other members of Hindu Undivided Family or assignees or trustees or agents or licensee or any person claiming under them.

Explanation VI to Sec. 11 says Res Judicata will operate against the person who are represented in the suit.

Illustration:

i. A sues B for rent. B contents that A is not the landlord and the suit is dismissed. A subsequent suit either by A or by X claiming through A is barred by Res Judicata. (As Res Judicata is operative not only against A but his legal representative X also).
ii. A sues B for rent. B contents that C and not A is the landlord. A fails to prove his title and the suit is dismissed. A then sues B and C for a declaration of his title to the property. The suit is not barred as the parties in both the suit are not same.

**Res Judicata between Co-Defendants**

To invoke the res judicata between the co-defendants, it is necessary to establish that-

1. There was a conflict of interest between co-defendants.
2. That it was necessary to decide the conflict in order to give the relief in which the plaintiff claimed in the suit.
3. That the court has already decided the question.
4. Co-defendants were necessary or proper parties in the former suit.

In *Iftikhar Ahmed v. Syed Meharban Ali*\(^5\), that in a former suit, one Ishwari Prasad claimed the title to certain property against Kaniza Fatima, Meharban Ali and Iftikhar Ahmed. The court held that the title did not belong to Kaniza Fatima and Meharban Ali as the legal heirs as their mother had relinquished the rights over the same. In the later suit, the dispute was between Iftikhar Ahmed on one hand and Kaniza Fatima and Meharban Ali on the other hand, regarding the same property. The Supreme Court held that the previous decision would operate as Res judicata here because there it has been decided between them. They are defendant in earlier case too.

**Res Judicata between Co-Plaintiffs**

In *Ferro Alloys Corporation Limited v. Union of India*\(^6\), the Supreme Court said that, a previous decision would operate as res judicata between co-plaintiffs if all the conditions are *mutatis-mutandis* satisfied.

**Res Judicata in Representative Suits [Explanation VI]:**

A representative suit is an instance where the person suing or sued in a representative character represent the parties and hence a decision in such suit would operate as res judicata. For the applicability of Explanation VI, following condition shall be fulfilled:

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\(^5\)Ibid.  
\(^6\)AIR 1999 SC 1235
a) There must be right claimed by one or more persons in common for themselves and other not expressly named in the suit.

b) The parties not expressly named in the suit must be interested in such right.

c) The litigation must have been conducted bona fide on behalf of all parties interested.

d) All the conditions laid down in Order I Rule 8 must be strictly complied with.

**Res Judicata and Pro Forma Defendant:**

A Pro Forma Defendant is a person against whom no relief is claimed. Person is made party for complete and effective disposal of suit. Since no matter is raised against him and no relief is claimed, therefore, finding does not operate as res judicata against pro forma defendant.

**Matter in issue**

The expression ‘Matter in issue’ means the rights litigated between the parties, i.e. the facts on which the right is claimed and the law applicable to the determination of that issue. Matter cannot be said to have been in issue in a suit unless it is alleged by one party and denied or admitted either expressly or necessary implication by the other [Explanation III to Section 11]. Furthermore, according to Explanation IV of Section 11 states that if a matter might and ought have been a ground for attack and defence in the former suit but which has not been made a ground shall also be deemed to be a matter directly and substantially in issue. The words ‘directly and substantially in issue’ have been used under Section 11 is contradistinction to the word ‘collaterally or incidentally in issue’ and decisions on such issue will not operate as res-judicata. Following examples are illustrative to make distinction

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between matters directly and substantially in issue and matter collaterally or incidentally in issue:

a) A sues B (i) for a declaration of title to certain lands, and (ii) for the rent of those lands for the year 2001. B denies A’s title to the lands and contends that no rent is due. In this case, there are two matters in respect of which relief is claimed viz. The title to the lands and the claim for rent. Both these matters are, therefore, directly and substantially in issue.

b) A sues B for rent. B pleads that lesser rent is payable, because the actual area of the land is lesser than what is mentioned in the lease-deed. The court, however, finds that the actual area is greater than the one shown in the lease. This finding as to excess area is not res judicata, because this issue was only collaterally or incidentally in issue.

Directly and Substantially in Issue: The word directly means, directly, at once, immediately without intervention and is used in contradiction. The word ‘substantial’ means of importance and value. A matter is substantially in issue if it is of importance and value for the decision of the main proceedings. It also means essentially, materially or in substantial manner. When a matter can be said to be directly and substantially in issue, no hard and fast rule can be laid down. It will depend on the facts and circumstance of each case.

For the applicability of Res Judicata, what is material is that there should be an identity of issues and not the identity of subject-matter. Thus the matter in issue is distinct from the subject-matter and the object of the suit on which the suit is based. And, therefore, where the subject matter, the object, the relief claimed and the cause of actions are different, but the issues are identical, the principle of res judicata can apply.

Collaterally or Incidentally in Issue: Suppose, in a case A and her mother brought a suit against uncle for partition and delivery of one-fifth share of the family property to the mother and for a marriage provision for herself. Here Matter directly and substantially in issue is claim for partition, whereas, provision for the marriage expenses is collateral or incidental in issue.
Constructive Res Judicata

Not Real. It means it should be but did not raise that point at that time.

Issues which should have raised in Plaint and issues which are ought to be raised by the defendant they are issues constructively in issues.

Explanation IV says where it might and ought to have been made a ground of attack or defence in the former suit but which has not been made a ground of attack or defence shall be deemed to have been matter directly and substantially in issue in such suit. It is thus, a deeming provision. The expression might and ought are of wide import. The word ‘might’ presupposes the party affected had knowledge of the ground of attack or defence at the time of previous suit. The term ‘ought’ compels the party to take such ground. These two words are to be read conjunctively and not disjunctively. The Apex Court in Workmen v. Board Trustee, Cochin Port Trust\(^8\) held that where any matter which might and ought to have been made then such a matter is deemed to have been constructively in issue to avoid multiplicity of litigation. Similarly, in the case of State of U.P. v. Nawab Hussain\(^9\), A a sub-inspector of Police was dismissed from the service by D.I.G. He challenged the order of dismissal on ground that no opportunity to hearing was given to him. The petition was dismissed by High Court. He then filed a suit and raised additional ground that since he was appointed by I.G., D.I.G. had no power to dismiss him as per Article 311(2) of the Constitution. When the matter went to Supreme Court in appeal, the Hon’ble Supreme Court held that the suit was barred by constructive res judicata as the plea was within knowledge of the plaintiff and could well have been taken in earlier writ petition.

Another example, A sues B for possession of property on the basis of ownership. The suit is dismissed. A cannot thereafter claim possession of property as mortgagee as that ground ought to have been taken in the previous suit as a ground of attack.

Thus, where the question is of such a nature that it affects the decree passed in previous suit, it must be deemed to be a question which ought to have been raise in the former suit and constructive res judicata will applied in such cases.

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\(^8\) AIR 1978 SC 1283
\(^9\) AIR 1977 SC 1680.
Principle underlying Constructive Res Judicata-

According to the doctrine of Constructive Res Judicata, where the parties have had an opportunity of raising a matter that should be taken to be the same thing as if the matter had been actually raised and decided. Thus, it helps in raising the bar of res judicata by suitably construing the general principle of res judicata. That is why the rule is called Constructive Res Judicata which, in reality, is an aspect or amplification of general principle of res judicata\(^{10}\).

The \textbf{distinction between Res Judicata and Constructive Res Judicata} has been carved out in the case of \textit{Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust}\(^{11}\) wherein it was observed that Section 11 contemplates actual res judicata while Explanation IV provides for constructive res judicata. When by any judgement or order any matter in issue has been directly or explicitly decided, the decision operates as res judicata in a matter in subsequent suit. It is also true in case of decision of court on an issue in an earlier suit which is implicit. However, when any matter which might or ought to have been a ground of attack or defence in the previous suit has not been raised in such suit, then it is deemed that the matter is constructively in issue and is therefore taken as decided. This is rule of constructive res judicata.

\textbf{Same Title}

The another condition of res judicata is that the parties to the subsequent suit must have litigated under the same title as in the former suit. Same title means same capacity. The test for res judicata is the identity of title in two litigations and not the identity of the subject matter involved in the two cases\(^{12}\). The term ‘Same title’ has nothing to do with the cause of action or subject matter of two suits.

For example, A sues B for title to the property as an heir of C under the customary law. The suit is dismissed. The subsequent suit for title to the property as an heir of C under the personal law is barred.

\(^{11}\) AIR 1978 SC 1283
\(^{12}\) Kushal Pal v. Mohan Lal (1976) 1 SCC 449
Competent Court

Competent Court is a court which decides former suit and is also competent to decide subsequent suit. The decision in a former suit by an incompetent court to try the subsequent suit will not operate as res judicata [Jeevantha v. Hanumantha, AIR 1954 SC 9].

The Competent Court must have been either

- Court of exclusive jurisdiction; or
- Court of concurrent jurisdiction; or
- Court of limited jurisdiction.

Court of exclusive jurisdiction- A plea of res judicata can be successfully taken in respect of judgements of Court of exclusive jurisdiction like revenue court, administrative court, etc.

Court of concurrent jurisdiction- A Court of concurrent jurisdiction means concurrent as regards pecuniary limits as well as subject-matter of the suit.

Court of limited jurisdiction- It was a consistent view before amendment of 1976, that both the courts, one deciding earlier and the one in which second suit is pending must have equal competence. To overcome this, Explanation VIII was added to make conclusiveness of issue decided in a former suit by any court of limited jurisdiction like Insolvency, Probate, Land acquisition, rent control tribunal, etc would operate as Res Judicata in subsequent suit notwithstanding that such court was not competent to try subsequent suit in which such suit was subsequently raised. The meaning of Court of limited jurisdiction was given by Supreme Court in Sulochna Amma V. Narayanan Nair13 that Court of limited jurisdiction includes court whose jurisdiction is subject to pecuniary limitation and other cognate expressions. A conjoint and harmonious reading of Section 11 and Explanation VIII results that if an issue which has arisen directly and substantially between the parties or their privies and decided finally by the court of competent jurisdiction, though limited, will operate as res judicata in the subsequent suit or proceedings.

Heard and finally decided

The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit. The word “has been and finally decided by

13 AIR 1994 SC 152
such court” leave no matter of doubt that the rule of res judicata cannot be invoked in a
subsequent suit unless the former suit has been heard and finally decided by the court.
Explanation IV to Section 11, thus, will be available only when there has been a hearing and
final disposal of the issues of facts between the parties and if they omitted to raise any ground
of defence or attack in such former suit, they would attract the rule of res judicata in the latter
suit. Thus, it is clear that, **Res Judicata will be applied when the matter will be heard and
finally decided by the court. In other words it has been decided on the merits.**

**Res Judicata will not apply when the suit is not finally heard and decided**

1. Former suit was disposed of ex-parte.
2. Former suit was dismissed for failure to produce evidence.
3. Former suit was dismissed for Pre-Mature.
4. Former suit was for want of cause of action.
5. Former suit was dismissed for Non-Joinder or Misjoinder.

**Whether Section 11 is exhaustive or not:** It is well established that doctrine of Res Judicata
codified in Section 11 is not exhaustive. This was observed by the Supreme Court in *Lal
Chand v. Radha Krishnan*\(^\text{14}\) that the principle motivating Section 11 can be extended to
cases which do not fall strictly within four letters of law.

**Two stages of the same proceedings:** The doctrine of Res Judicata also applies to different
stages of the same proceeding or suit. If any interlocutory order decides the controversy in
part between the parties, such decision would bind the parties and operate as res judicata at
all subsequent stage of the suit\(^\text{15}\).

**Res Judicata and Rule of Law:** The Supreme Court in Daryao and Ors. v. State of U.P. and
Ors.\(^\text{16}\) held that Res Judicata is an essential part of rule of law. The court in this case held that
rules of res judicata applies also to a petition filed under Article 32 of the C.O.I and if a
petition filed by the petitioner in the High Court under Article 226 of the C.O.I is dismissed
on merits, such decision would operate as res judicata so as to bar a similar petition in the
Supreme Court under Article 32 of the Constitution.

\(^{14}\) *Ibid.*


\(^{16}\) *AIR 1961 SC 1457*
Applicability of Res Judicata in Execution proceedings: Explanation VII to Section 11 deals with the Execution proceedings. It clearly states that proceedings for execution of decree, question arising in execution proceedings and in former proceedings for execution shall deemed to be suit, issue and former suit respectively.

Exception to the Rule of Res Judicata: In *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar*<sup>17</sup>, the Supreme Court laid down 3 exceptions to the rule of res judicata-

1. When judgement is passed without jurisdiction.
2. When matter involves a pure question of law.
3. When judgement has been obtained by committing fraud on the court.

Non-Application of Rule of Res Judicata

- No adjudication between parties.
- The Correct interpretation of provision of law was not in question between the parties.
- Finding on title by small court does not bar second suit.
- If finding is *ultra vires* the powers, then it does not operate as res judicata.
- When a suit is dismissed on technical ground then any finding given on merit is not binding.

**Difference between Res Judicata and Estoppel**

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<th>Estoppel</th>
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<td>A suit finally heard and decided cannot be presented further as a suit.</td>
<td>A person cannot be allowed to change his position if he makes another believe in good faith.</td>
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<tr>
<td>Objective</td>
<td>Public policy and prohibition of multiplicity of litigation</td>
<td>To protect the right of such persons who act in good faith.</td>
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<td>Foundation</td>
<td>It is a result of judgement of court</td>
<td>Result of act of the party.</td>
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<td>Prohibition</td>
<td>Both the parties are prohibited by res judicata.</td>
<td>Prohibits a party to change its position.</td>
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<sup>17</sup> 2008 (9) SCC 54
None of them can bring suit in court.

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<th>Applicability</th>
<th>Applicable to both parties</th>
<th>Only to that party who acts.</th>
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### Difference between Res Judicata and Res Subjudice

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<td>Suit is finally decided by competent court.</td>
<td>Suit is already pending in a competent court.</td>
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<tr>
<td>Case is heard and finally decided.</td>
<td>Case is pending in a court.</td>
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<tr>
<td>Subsequent suit is completely prohibited.</td>
<td>Subsequent suit is suspended i.e. stayed.</td>
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<td>Litigation discouraged</td>
<td>Prohibited of concurrent justice.</td>
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### BAR TO FURTHER SUITS [SECTION 12 OF CPC]

The basic rule contained in Section 12 is that if a plaintiff is restricted to file a suit for any specific cause of action and such restriction is mentioned in Orders under Schedule I, then he cannot file a suit in any court to which this code applies for the said cause of action. This section discourages litigation and multiplicity of suits. For example, Order II Rule 2, Order IX Rule 9, Order XI Rule 21, Order XXII Rule 9, Order XXIII Rule 1 and Rule 3A, etc. bars the plaintiff from filing fresh suit on same cause of action.