



Dimensions of Res Judicata Applicability in Pakistan

Hafiz Abdul Rehman Saleem	Assistant Professor, Department of Law, University of Sahiwal, Sahiwal, Punjab, Pakistan.
Hamid Mukhtar	Assistant Professor, Department of Law, University of Okara, Okara, Punjab, Pakistan
Imtiaz Ahmad Khan	Associate Professor, Department of Law, University of Sahiwal, Sahiwal, Punjab, Pakistan

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Corresponding Author:

Imtiaz Ahmad Khan

Email: Imtiazahmad@uosahiwal.edu.pk

Abstract: *Res judicata is a matter of public policy and right during any litigation. The doctrine is discussed in the Code of Civil Procedure 1908 (CPC 1908) with an exhaustive instance of applicability and inapplicability in Section 11. However, the explanation given in Section 11 appears in-exhaustive considering the broader spectrum of cases and scenarios. This manuscript consolidates the instances that complement section 11 to formulate the ever-exhaustive list of instances for the proper application of res judicata. The study conducted case-based research and extracted the rules formulated in the judicial decisions by the higher judiciary. The present research contemplates a better comprehension of the rules that can save the public right of litigation and also inhibit unnecessary instances of frivolous litigation.*

Introduction

The full Latin maxim "Res Judicata Pro Veritate Accipitur" has, over time, been shortened to "Res Judicata." "Res" refers to the subject matter, while "Judicata" means "already judged." According to the Merriam-Webster Dictionary(2022), Res Judicata is "a matter finally decided on its merits by a court having competent jurisdiction and not subject to re-litigation between the same parties on the same subject matter." The concept of Res Judicata is applicable in both civil and common law systems and can be used in both criminal and civil cases. Many scholars agree that the Rule of Res Judicata originated from Roman law (Akhil Reed Amar, 1993). The earliest known articulation within the common law system is from the case of the Duchess of Kingston in 1776 (Mendelson, 2012).

In legal theory, Res Judicata has two forms: issue estoppel and cause of action estoppel (Maurice Mirosolin, 2022). Issue estoppel is the bar on an issue that has already been decided in a former judgment, while the cause of action estoppel is the conclusiveness of judgment or "bar by the verdict." These rules aim to protect public policy and ensure that individual litigants' rights are safeguarded. Res Judicata is a principle used to protect the impact of the primary judgment. A respondent in any claim can utilize Res Judicata as protection to bar re-litigation on the same cause of action. The "bar by judgment" rule states that the Judgment in any proceeding would eliminate that cause of action, thereby preventing any subsequent action based on that cause of action. The point is to identify the cause of the action. The "bar by verdict" rule states

that when an issue has been decided, those decisions are final and do not allow parties to re-litigate the same issue in subsequent proceedings. Under this rule, it is the identity of the issue, not the identity of the cause of action, that is determinative.

The principle of res judicata revolves around the maxim, “*interest rei publicae ut sit finis litium*,” which means it is in the interest of society as a whole to bring the litigation to an end. (legal maxims). It is also generally said that res judicata is a rule of public policy. Hence this doctrine is formulated to avoid unnecessary litigation. It also helps to avoid the burden of cases on the court and saves the time and economy of the court. On the other hand, another maxim, “*ubi jus ibi remedium*,” means where there is a wrong, there is a remedy that lays the foundation for every person to get remedy if there is an infringement of any right which is assured by law (Thomas, 2004). Combining both maxims creates confusion about how to create an equilibrium of the application of both maxims, and the present research is an attempt to articulate the standards of applicability and inapplicability of the doctrine of res judicata.

Res judicata has its roots in the English Common Law system and has evolved based on the principles of judicial economy, consistency, and finality. It was initially incorporated into the Code of Civil Procedure 1908 (CPC 1908) and later adopted by the legal system of Pakistan as a whole. Its applicability has extended beyond the realm of civil procedure and found its place in administrative law as well. Over time, other acts and statutes in Pakistan have also embraced the concept of res judicata. The common law tradition in Pakistan recognizes the importance of judicial precedents, which are binding on lower courts and hold similar authority as legislation. So, in Pakistan, courts describe the situations where the principle of res judicata attracts and where it fails to enforce (Dainow, 1966). There are numerous laws in Pakistan for civil litigation on different forums. The doctrine of res judicata

works differently in every forum. The basic applicability criteria of res judicata are provided in section 11 of the Code of Civil Procedure 1908, which provides that the same parties can't file suit on the same cause of action. CPC 1908 also provides the right of first and second appeal. According to sections 114 and 115 of CPC 1908, review and revision against the judgment can also be filled either by the petitioner or defendant. So, it raises the question of how the doctrine of res judicata works amid that whole procedure and how the doctrine of res judicata creates a balance to not only allow the availability of rights but also bar multiple litigations. The questions are answered in this study by the collection of judicial interpretations of res judicata and the collection of all rules which were set by higher courts of four provinces and the Supreme Court of Pakistan. The rules further clarify where the litigant can avail his right of remedy and where it cannot, for the reason of avoidance of unnecessary litigation. Many judgments are focused on the explanation of the doctrine of res judicata. They describe the applicability and inapplicability of the doctrine of res judicata in multiple scenarios. It is necessary to understand for the public at large on what grounds the same litigation is barred, and further litigation does not resort to availing the remedy but rather a duplication of an already decided matter. The present study attempts to complement Section 11 of CPC 1908 about the doctrine of res judicata, and rules are extracted and compiled from the judgments of the superior judiciary of Pakistan to complement Section 11 of CPC 1908.

The doctrine of res judicata and its applicability in the legal system of Pakistan has been neglected by researchers. No literature has been found on the very subject. Ongoing research will help the general public, future researchers, and legal professionals to understand the doctrine of res judicata in a more systemic manner.

Section 11 of CPC, 1908 of Pakistan, is the cornerstone for the applicability of the doctrine of Res Judicata in civil matters and forms the basis of judicial decisions. In the explanation of section 11, the former suit shall be considered, which is decided first. This section does not affect the right to appeal. The matter alluded to above affirms that the previous suit has been affirmed by one party and either denied or conceded, explicitly or impliedly, by the other. Any claim of which matter is already decided shall not be entertained. If any person with good intentions claimed anything for public rights, then the Res Judicata is applied to the public as a whole (*Code of Civil Procedure, 1908*). The main thesis of the manuscript, however, addresses the following two questions: 1) Under what conditions doctrine of Res Judicata is applicable in civil cases by courts of Pakistan? 2) What are circumstances on which legitimate principles of Res Judicata neglected to apply in civil cases?

The primary research method for this study is a literature review and a briefcase law study of the applicability of the doctrine of res judicata in the courts of Pakistan. The doctrinal research methodology was adopted to highlight the reasons and grounds on which res judicata applies or fails to apply. The process of research is systematic to deduce the very nature of the hiccup. Data collection is carried out on qualitative techniques from the judgments relevant to section 11 of CPC 1908. Through a study of the cases of res judicata, relevant data is extrapolated to the limelight applicability of the doctrine. The reason behind selecting the doctrinal methodology is the nature of the problem statement. The conclusions are based on hard evidence and observations taken from the judgments of the higher judiciary of Pakistan. Regarding the nature of the research problem, this is the reliable requirement to dig deep to find the formation of new principles through judgments relevant to res judicata.

Applicability of Doctrine of Res Judicata

In the common law system, precedent is a source

of law. In any case, it is the court that declares the parties to be the same in the subsequent case to invoke the bar of res judicata under section 11 of CPC 1908. Following are the new principles that highlight the contemporary application of the doctrine of res judicata extracted from different cases which are not covered in section 11 of CPC 1908.

Estoppel to Demand a Right which is not Claimed in the Previous Case

In the case “Muhammad Malik v Chief Executive & 6 Others”, Judge Zahoor Ahmad Mengal contends that each cause of action once attempted and mediated upon by a skillful discussion, should be considered definitive. Judge ordered that the relief which is or which can be claimed and prayed for by a litigant cannot be claimed or prayed for again by the same litigant before the same forum. The word ‘forum’ is a very vast term. It also extends to the decisions by arbitration. In cases where a litigant has multiple things to claim but just claims one thing and later on decides to claim others, things relevant to the case may be barred by the doctrine of res judicata. For example, the litigant claims possession but not means profit. The court only grants him possession. Res Judicata is also applicable on means profit, which is that he can’t file a case later for means profit on the same forum (*Muhammad Malik v Chief Executive & 6 Others*, 2019). This is called the constructive res judicata.

Another case, “State Bank of Pakistan Through Governor and Another v Imtiaz Ali Khan And Others,” gives the instance of applicability of constructive res judicata where the supreme court judges; Iftikhar Muhammad Chaudhry, Tariq Parvez, and Ghulam Rabbani examines that Failure of a party to seek all the relief to which he is entitled, whether available or not sought, cannot be claimed by filing a subsequent legal action as it falls within the purview of constructive res judicata. This particular case law also bars the party from starting any additional proceedings even if the same party was entitled but failed to demand on the very first instance.

They are not allowed to file new demands in the same suit until the law allows it.

Bar to File Fresh Suit on the Matters Already Decided in the Court

In this case, *Abdul Rauf Khan v Muhammad Hanif & 14 Others*, judges Muhammad Azam Khan and Raja Saeed Akram Khan concluded that the sale deed was challenged in a suit but dismissed because a fresh suit cannot be filed. The same also considers that the matter directly and substantially was resolved by a court of competent jurisdiction and cannot be re-agitated through a fresh suit. It further said that the logic behind the rule of res judicata is that party cannot be vexed twice for the same cause. All cases were based on a cause of action. When the judgment is announced, the cause of action merges into the judgment, and filing of a fresh suit on a similar cause of action amounts to dragging an innocent person into unnecessary litigation. Hence court sets the principle that a sale deed can't be challenged twice (*ABDUL RAUF KHAN v MUHAMMAD HANIF & 14 others*, 2013).

Civil Revision cannot be Filled Twice if it has already been Decided

In “*Akram and three others v Nazar Ali & Others*,” Judge Abdul Qadir Mengal dismissed the petition by considering that if civil revision and the original suit were decided in a competent court, the suit become infructuous. So, in that case, the matter was hit by section 11 of CPC. In this case, the civil revision was already filled and decided, so it can't be filled again, even on new grounds in the same suit. Parties can avail of other remedies according to CPC, but they are bared to file civil revision twice. Hence, section 115 of CPC 1908 provides the right of civil revision to parties in the suit, but it can't be avail twice in the same suit (*AKRAM & 3 others v NAZAR ALI & others*, 2012).

Bar on Subsequent Constitutional Petition

Honorable Judge Syed Asghar Haider, while deciding the case “*Muhammad Rafiq v Chief*

Election Commissioner of Pakistan and four Others,” declared that the principle of res judicata is also applicable to the constitutional petition. If one constitutional petition of 199 is filled on one cause of action, then another petition can't be filled on the same cause of action by the same parties. If one suit of the civil matter is decided by courts within the limits of Pakistan, then the constitutional petition on the same cause of action cannot be filled. For applicability of res judicata on the constitutional petition, all the elements of res judicata must be fulfilled, for example, the same cause of action by the same parties. The principle of res judicata is applicable to all types of writs, i.e., mandamus, habeas corpus, prohibition, quo warranto, and certiorari. It was also necessary because if one suit is decided in the lower court, then an appeal can be preferred in the high court according to the civil procedure code but not a writ petition (*Muhammad Rafiq v Chief Election Commissioner of Pakistan and four Others*, 2008).

Bar on New Suit if Former Suit is Dismissed on the Basis Non-pursuance of Suit by Plaintiff

In *Noor Avenue Cooperative Housing Society Hanjarwal, Lahore (Registered), through Its President versus L.D.A. through Its Director General, Lahore, and 3 Others* cases, Judge Muhammad Muzammal Khan decided that suit was dismissed because principles of res judicata applied on suit and writ petition. Res judicata is also applicable if the former suit is dismissed on the basis of non-pursuance of the suit by the plaintiff. Suit and writ petition on the same subject matter is barred even if due to non-pursuance of a suit. There are some suits that are dismissed due to the petitioner's non-appearance in court, which also comes within the limitation of res judicata. If any person files a suit against someone after that, he fails to follow the legal procedure of such a suit. Then a court may dismiss such a suit. According to that judgment, res judicata is also applicable to that scenario. There is an exception in that particular case. If the subject matter or cause of action changes, the

suit can be filed on new grounds. Res Judicata is not applicable between the same parties on a new cause of action.

Res Judicata also Applies to Administration, Partition, and Permanent Injunction

In the case of *Khursheed Ahmed Versus Fayyaz Ahmad and 7 Others*, Judge Gulzar Ahmad made a remark stating that a suit for administration, partition, and permanent injunction, as well as a letter of administration, had already been granted by the district judge. However, an appeal regarding this matter was still pending. It is important to note that suits related to administration, partition, and permanent injunction are considered civil matters. Therefore, the principles of res judicata are applicable to them as well. Once a matter or a part of a matter has been decided, it cannot be reinstituted. The doctrine of res judicata applies to suits of administration, partition, and permanent injunction, ensuring that the same matter cannot be re-litigated (*Khursheed Ahmed Versus Fayyaz Ahmad and 7 Others*, 2006).

Mian Muhammad Shafi and Another versus Additional District Judge, Mianchannu District Khanewal and 14 Others

In this situation, the judge debars the court from trying any suit or "issue" which has been heard and finally decided by a court in an earlier inter-party suit. This judgment is highly valuable in setting of principle regarding Res Judicata because it gives a crystal clear point of view about the matter which is already decided. Res judicata is applicable to All interested parties who have been duly notified and given a fair opportunity to participate and be heard and are referred to as the proceeding or hearing of the parties. When a decision is made, subject to any right of appeal, it would be inconvenient if the same issues could be dealt with ad infinitum by the same party so that they were all bound by the outcome. However, any person who was not a party to these proceedings and who can demonstrate a

legitimate interest in reopening the case has the right to ask the court for the right to be heard. However, in some situations, the judgment is rendered in rem, meaning that it binds all persons, whether they were parties to the case or not (*Mian Muhammad Shafi And Another V Additional District Judge, Mianchannu District Khanewal And 14 Others*, 2006).

Shah Muhammad and others versus Secretary, m/o Communication, Govt. of Pakistan Islamabad and two others

Judge Ch. Muhammad Ilyas and Saeed Ahmad Zaidi adjudicated that if the appeal was on the same grounds as the former appeal or there may be a mere modification in prayer would not enable the appellant to file a fresh appeal. This Judgment clearly shows that the principles of Res Judicata are also applicable to the appeals if they are instituted twice on the same grounds. In a general manner, the appeal is the right of a party. Principles of Res Judicata don't apply to the appeal which is filled on the very first time, but if the same appeal is filled again in the same suit, then the principle of Res Judicata is surely applicable (*Shah Muhammad And Others V Secretary, M/O Communication, Govt. Of Pakistan Islamabad and 2 Others*, 2006).

Khair Muhammad versus Muhammad Hussain and Others

In this case, judges Mian Shakirullah Jan, Ch. Ijaz Ahmad talks about that appeal on the decision of two civil suits, one decree challenged but not the other, then it causes the effect of omission, and a non-challenged decree will separate as res-judicata. The issue of the effect of omission to challenge the second decree followed by a single judgment has been the subject matter of serious debate before high courts. An appeal against the decree passed was sufficient to get rid of the adjudication made by the single judgment. Res Judicata is also applicable to an unappealed decree (*MUHAMMAD KABIR Vs. SECRETARY GOVT. OF PUNJAB etc.*, 2011).

Syed Agha Hussain Shah and Others versus Deena Bibi and Others

It is a fact that provisions of CPC, except sections 10 and 11, are not applicable to proceedings before the family court, and a family court can follow any process acceptable in law to carry on its proceedings. According to that Judgment, the doctrine of Res Judicata can also be applicable to family matters (*Syed Agha Hussain Shah And Others V Mst. Deena Bibi And Others*, 2017).

The Civil Procedure Code of Pakistan gives the basic concept of res judicata that the same parties can't file suit on the same cause of action. This is a very broad concept that gets clarity from different judgments of the superior judiciary. These have been discussed in the preceding section. Different cases have been discussed, providing new rules for the doctrine of res judicata. Res Judicata is applicable on relief which can be claimed by one litigant by one recourse at law and which cannot be re-claimed or prayed for by the same litigant before the same forum. According to this doctrine, appeals, revisions, and writs also can't be filled twice by the same parties on the same grounds. Res Judicata is also applicable to trying any suit or issue which has been heard and finally decided by a court in an earlier inter-parties' suit. Suits of administration, partition, and permanent injunction are also considered civil matters. So, the principles of res judicata, written in CPC, are also applicable to them. If a court has already decided the application before, between the same parties on the same gift deed, so res judicata is applicable on the application of rejection of the plaint. If the application of rejection of the plaint is denied by one time, then it can't be filled again because it is also hit by the doctrine of res judicata.

Inapplicability of Doctrine of Res Judicata

There are many exceptions to the applicability of the doctrine of res judicata in civil cases in Pakistan. There are few special cases for Res Judicata which permit the party to challenge the

legitimacy of the first judgment. These exemptions are generally depending on jurisdictional issues. It did not depend on the insight of the previous decision of the court. Res Judicata may not be relevant when cases create the impression that they need re-litigation. Many matters like these need to be reexamined by the courts on the new circumstances based on their changed nature. Generally, courts in Pakistan avoid the applicability of the doctrine of res judicata for the avoidance of miscarriage of justice. This needs clarity in the law, and in the common law system, precedence provides that platform. Different judgments show many situations in which the doctrine of res judicata is not applied. Courts negate the doctrine of res judicata in accordance with section 11 of CPC. In other words, the applicability of the doctrine of res judicata depends on the nature of the case. In many situations, a court may have to determine the similarities between the causes of action of the former suit with the new suit. If courts find enough reasons to believe that the cause of action is the same between litigants, then the court can apply res judicata, but otherwise, courts shall not dismiss the suit on the basis of res judicata. In a similar manner, there are many other situations that are considered binding principles for lower courts for the negation of the doctrine of res judicata (MUNIR, 2008). Further, the judgments passed by the Supreme Court of Pakistan and the High Courts of Punjab, Sindh, AJK, Khyber Pakhtunkhwa, and Baluchistan give new laws for the negation of Res Judicata. Case laws show negation of the doctrine of res judicata is discussed below.

Muhammad Bakhsh v Muhammad Junaid and 3 Others

On the hearing of the constitutional petition under Article 199 court decided that the maintenance allowance fixed was not sufficient due to hiking prices and the growing needs of minors. Section 11 of CPC is not applicable to suit enhancement in the rate of maintenance allowance. The rate of maintenance of minors is

evolving through the passage of time, due to which the doctrine of Res Judicata can't be applied to it. Child maintenance is a basic right, so it can't be deprived of any course (*Muhammad Bakhsh V Muhammad Junaid And 3 Others*, 2015).

Muhammad Iqbal v Nasreen Akhtar

In the case where Justice Ayesha A. Malik presided, it was decided that the suit for recovery of maintenance allowance had been decreed. Subsequently, a suit for the enhancement of maintenance allowance was filed, seeking an increased amount of Rs. 4000 with a 5% annual increase from the date of the institution until the legal limit of each claim. The court held that there is no legal bar against filing a fresh suit for the enhancement of maintenance allowance due to various factors such as a change in circumstances, cost of living, and additional needs of the minor, which the father is legally obligated to provide (*Muhammad Iqbal V Mst. Nasreen Akhtar*, 2012).

In a suit for enhanced maintenance, factors such as the growth of children, changes in the cost of living, changes in the status of the parties, and adjustments made based on the needs of the children may contribute to either a change in the cause of action or establish a fresh cause of action for the children to demand an increased maintenance allowance. Therefore, the principle of res judicata, which bars the re-litigation of the same matter, does not apply in this case. Fresh proceedings for maintenance allowance are not barred by the doctrine of res judicata, and thus, the principle of res judicata will not be applicable.

Masood Anjum, Assistant Superintendent (F), Postal Life Insurance, Sahiwal and Another v Director General Pakistan Post, Islamabad, and 3 Others

In this case, the Court held that where litigants are bona fide in respect of a public right or a private right claimed jointly by themselves and others, all persons interested in the such right, Section 11 of the CPC For the purpose of such

litigants shall be deemed to claim under persons so litigated. Good intentions are necessary for the enforcement of this case law. If some litigation is done with bad intentions, then this Judgment is not enforceable. This initially passed when the respondent was a public servant. Another member of the public can relitigate if there is any malafide in previous suit (*Masood Anjum, Assistant Superintendent (F), Postal Life Insurance, Sahiwal And Another V Director General Pakistan Post, Islamabad And 3 Others*, 2012).

Muhammad Muzammal Khan Khairat Masih (Deceased through Legal Heirs) v Aziz Sadiq

As evident from the judgment rendered by Abdul Hafeez Memon and Muhammad Ilyas, it was concluded that Section 11 of the Civil Procedure Code (CPC) is not applicable in cases where an earlier suit was withdrawn and therefore was not decided on its merits. In legal terms, "merits" refer to the inherent rights and wrongs of a legal case, disregarding any emotional or technical biases. The purpose of the doctrine of res judicata is to prevent a plaintiff from filing a new suit after having failed to pursue the first one diligently and carefully.

While a plaintiff has the right to withdraw their suit at any time, they cannot initiate a fresh suit on the same subject matter without seeking permission from the court. Thus, obtaining court permission is necessary for filing a fresh suit after withdrawing a previous one (*KHAIRAT MASIH (deceased through legal heirs) V AZIZ SADIQ*, 2004).

Jewan Bibi and Two Others v Inayat Masih

In this case, the judge held that the principle of application of res judicata must be decided as an issue, and if there is no evidence to support the application of res judicata, the issue cannot be decided in favor of the petitioner. An issue of law is a question of the application of law rather than a question of fact. So, if there is authentic evidence produced by the petitioner, the doctrine of res judicata becomes applicable. The burden of

proof lies on the petitioner for exercising the right of res judicata. He must have to prove court that the litigant is filing a fresh suit on that particular cause action that has already been decided. If a petitioner fails to produce such evidence, then in a general way doctrine of Res Judicata is not applicable (*Mst. JEWAN BIBI and two others V INAYAT MASIH*, 1996).

Failure in the applicability of doctrine may cause a delay in justice because it provides an opportunity for to litigant to file suit again and again. It may amount to justice delayed or justice denied. Sometimes it becomes difficult for Court to decide whether the doctrine of res judicata is applicable or not, which may cause ambiguity in the law.

Results of applicability of Res Judicata

The findings on the applicability of the doctrine of res judicata in civil cases of Pakistan imply that the relief which prayed once cannot be claimed again on a similar forum. Appeal, revision, and writs also can't be filled twice by the same parties on the same grounds. Res Judicata is also applicable to trying any suit or "issue" which has been heard and decided by a court in an earlier inter-party suit. The principles of Res Judicata, written in CPC, are also applicable to suits of administration, partition, and permanent injunction. Application of rejection of plaint can't be filled twice.

Results of inapplicability of Res Judicata

There are different circumstances in which the doctrine of Res Judicata is not applicable. In a suit of maintenance of a minor, the doctrine of Res Judicata can't be enforced due to changes in prices; if any member of the public file any suit with malafide, then another member can also claim such right. If an earlier suit was not decided according to the merits of the law, then the doctrine of res judicata is also not applicable. The burden of proof for the plea of res judicata is on the petitioner. If the petitioner fails to produce evidence for this purpose, then res judicata

cannot be enforced.

Conclusion

The concluding stance regarding the principle of Res Judicata is that the same party could not file a fresh suit on a similar cause of action. The application of res judicata goes in both directions, including applicability and inapplicability in accordance with the circumstances of the case. The whole research is based on case studies which are giving the commotion that whenever the superior courts interpret this doctrine, new rules emerge which are binding to the lower courts.

Recommendations

It is recommended that the civil courts of Pakistan should apply the doctrine of res judicata more uniformly. The doctrine of res judicata needs more interpretation by the superior judiciary to remove the ambiguities in this particular doctrine. More legislation also requires clarification of the doctrine res judicata for smooth application. Sometimes judiciary may interpret it wrongfully due to the unavailability of basic rules of this particular doctrine. Failure to apply the principle of res judicata may cause a delay in justice and flooding of cases, and over-insistence on the use of res judicata may stop the proper dispensation of justice, so courts must consider the application of res judicata in a more precise manner. The change in the law is continuous. New legislation and judgments are passed every day. So, this change may require further research to derive a better understanding of the application of res judicata in civil cases in Pakistan. There is room to dig deep into the application of the res judicata doctrine in criminal cases, which opens new dimensions for future research.

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