

“an analytical study of writ jurisdiction and doctrine of res judicata”

[Law](#), [Common Law](#)



“ AN ANALYTICAL STUDY OF WRIT JURISDICTION AND DOCTRINE OF RES JUDICATA" I INTRODUCTION A “ writ" is written court order which commands someone to do something or to refrain from doing something. This term originated in English common law where it was first used to describe a written command from the King. As such, a writ carried great weight and authority. Indian Constitution incorporated the term “ writ" into its legal system as well. The origin of writs in India goes back to the Regulating Act, 1773 under which Supreme Court was established at Calcutta. The charter also established other High courts and these High Courts had analogous power to issue writs as successor to the Supreme Court. The other courts which were established subsequently did not enjoy this power. The writ jurisdiction of these courts was limited to their original civil jurisdiction which they enjoyed under section 45 of the Specific Relief Act, 1877. The makers of the Constitution have adopted the English remedies in the Constitution under Articles 32 and 226. There has been specifically made provisions in the Constitution which empowers the Supreme Court and High Courts to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The fundamental rights which are inalienable sacrosanct in nature and character which were conceived in national and public interest could be illusory if there is no constitutional machinery provided for its enforcement. Unless such constitutional remedies for its enforcement is not provided the rights guaranteed by part III of the Constitution cannot be ever implemented by the citizens. Article 32 contained in Part III is itself a fundamental right given to the person under the Constitution. Similarly Article 226 of the Constitution is conferred on the High Courts to exercise its

prerogative writs which can be issued against any person or body of person including the government. The distinction between the two remedies is very negligible. The remedy under Article 32 is confined to enforcement of fundamental rights whereas Article 226 is available not only against the enforcement of fundamental rights but also for any other purpose. Thus the constitution provides the discretionary remedies on the High Court and the Supreme Court. In the absence of the provisions of such remedies no one can enforce its rights given. Thus wherever there is a right there must be a remedy for it. Thus it should satisfy the maxim, „ ubi jus ibi remedium. One of the principle makers of the constitution, Dr. Ambedkar has given the prime importance to Article 32 among all other articles from the Indian Constitution. He has referred that, “ It is the very soul of the Constitution and the very heart of it. ” Res Judicata is a phrase which has been evolved from a Latin maxim, which stand for „ the thing has been judged , meaning there by that the issue before the court has already been decided by another court, between the same parties. Therefore, the court will dismiss the case before it as being useless. Res Judicata as a concept is applicable both in case of Civil as well as Criminal legal system. The Doctrine of Res Judicata strives to strike a balance between the two largely separated poles. One pit assures an efficient judicial system that renders final judgments with certainty and prevents the inequity of a defendant having to defend the same claim or issue of law repeatedly. On the other hand, it protects the plaintiff's interest in having issues and claims fully and fairly litigated. A US Supreme Court Justice explained the need for this legal precept as follows: Federal courts have traditionally adhered to the related doctrines of res judicata (claim

preclusion) and collateral estoppel (issue preclusion). Under Res Judicata, a final judgment on the merits of an action precludes the parties . . . from re-litigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first cause. As this court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on a adjudication. The basic point involved in the Nature of the doctrine of Res Judicata is that the doctrine tries to bring in natural and fair justice to the parties and that too by barring the other party to file a multiple number of suits either for justice or for harassing the other party.

I. I REVIEW OF LITERATURE: Books referred: \* The Constitutional Law of India by Dr. J. N. Pandey, Published by Central Law Agency — 48th Edition - This book contains the introductory part related to the writ and res judicata and the relevant cases. \* Commentary on the Constitution of India by Arvind P Datar, Published by the Wadhwa Nagpur — Vol. 1- 2nd Edition 2007 — This books contains the views about the application of writ and judicial pronouncement in relation to res judicata. \* The Constitution of India by Prof. S. R. Bhansali, Published by India Publishing House- Vol. 1 — This book contains the application of writ in case of violation of fundamentals rights and concept of res judicata under administrative law.

II. PRESENT STUDY A. Conceptual Framework: The Writ Jurisdiction of Supreme Court can be invoked under Article 32 of the Constitution for the violation of fundamental

rights guaranteed under Part — III of the Constitution. Any provision in any Constitution for Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions, which is ensured by the writ jurisdiction. The Doctrine of Res Judicata strives to strike a balance between the two largely separated poles. One pit assures an efficient judicial system that renders final judgments with certainty and prevents the inequity of a defendant having to defend the same claim or issue of law repeatedly. B.

Research Methodology: It is a doctrinal research. Looking at the vastness of the research topic Doctrinal legal Research methodology has been adopted.

To make an authenticated study of the research topic, the relevant information and data necessary for its completion has been gathered from books, websites , newspapers, journals, Case studies and the case laws. I.

Aim & Objectives: The aim of this research is: \* To study in detail the Writ Jurisdiction and Doctrine of Res Judicata with an analytical study. The objectives of this research are: \* To know about the role of Writ if there is violation of fundamental rights. \* To understand the concept of res judicata and it’s applicability in case of Civil as well as Criminal legal system. II.

Hypothesis: The hypotheses behind this research are: 1. The right of Writ Jurisdiction to approach a court is not an absolute power. 2. The Doctrine of Res Judicata is not comparable with Writ Jurisdiction. III. Research Questions: 1. What is Writ? 2. What are the objectives of Writ Jurisdiction? 3. What is the meaning of the Doctrine of Res Judicata? 4. Whether the concept of Doctrine of Res judicata is applicable over all Writs. IV. Data Collection: Looking at the vastness of the research topic Doctrinal legal research methodology has been adopted. To make an authenticated study of the research topic, the

relevant information and data necessary for its completion has been gathered from books, websites, newspapers, journals, Case studies and the case laws. V. Limitation: Regarding the topic the case laws are not been discussed thoroughly and there are very limited books and material available with reference to as and when lunatic detained is declared fit to be released.

III. OBSERVATIONS AND FINDINGS: Chapter I. Writ: 1. 1 Meaning: The Writ Jurisdiction of Supreme Court can be invoked under Article 32 of the Constitution for the violation of fundamental rights guaranteed under Part — III of the Constitution. Any provision in any Constitution for Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions. Since the reality of such rights is tested only through the judiciary, the safeguards assume even more importance. In addition, enforcement also depends upon the degree of independence of the Judiciary and the availability of relevant instruments with the executive authority. Indian Constitution, like most of Western Constitutions, lays down certain provisions to ensure the enforcement of Fundamental Rights. These are as under: (a) The Fundamental Rights provided in the Indian Constitution are guaranteed against any executive and legislative actions. Any executive or legislative action, which infringes upon the Fundamental Rights of any person or any group of persons, can be declared as void by the Courts under Article 13 of the Constitution. (b) In addition, the Judiciary has the power to issue the prerogative writs. These are the extra-ordinary remedies provided to the citizens to get their rights enforced against any authority in the State. These writs are - Habeas corpus, Mandamus, Prohibition, Certiorari and Quo-warranto. Both, High Courts as well as the Supreme Court may issue the

writs. (c) The Fundamental Rights provided to the citizens by the Constitution cannot be suspended by the State, except during the period of emergency, as laid down in Article 359 of the Constitution. A Fundamental Right may also be enforced by way of normal legal procedures including a declaratory suit or by way of defense to legal proceedings. In India Article 32 and 226 of the Constitution gives power to the Supreme Court and High Court to issue writs in case of breach of Fundamental rights of any citizen by the state. By such writs the Judiciary can control the administrative actions and prevent any kind of arbitrary use of power and discretion. There are 5 kinds of writs 1.

Mandamus 2. Certiorari 3. Prohibition 4. Quo warranto 5. Habeas corpus 1. 2

Origin of Writs: The origin of writs can be drawn from the English Judicial system and were created with the development of English folk courts-moots to the common law courts. The law of writs has its origin from the orders passed by the King's Bench in England. Writs were issued on a petition presented to the king in council and were considered as a royal order. Writs were a written order issued in the name of the king which acted as groundwork for the subsequent proceedings. However, with different segments writs took various forms and names. The writs were issued by the crown and in the interest of the crown but with the passage of time it became available for ordinary citizens also. However a prescribed fee was charged for it and the filing of these writs were known as Purchase of a writ.

1. 3 Historical Background: The origin of writs in India goes back to the Regulating Act, 1773 under which Supreme Court was established at Calcutta. The charter also established other High courts and these High Courts had analogous power to issue writs as successor to the Supreme

Court. The other courts which were established subsequently did not enjoy this power. The writ jurisdiction of these courts was limited to their original civil jurisdiction which they enjoyed under section 45 of the Specific Relief Act, 1877.

1. 4 Type of Writs: Certiorari Certiorari is a Latin term being in the passive form of the word ‘ Certiorare’ meaning to inform. It was a royal demand for information. Certiorari can be described as “ one of the most valuable and efficient remedies. ” Certiorari is one of the five prerogative writs adopted by the Indian Constitution under Article 226 which would be enforced against the decisions of the authority exercising judicial or quasi judicial powers. Such powers are exercised when the authorities have failed to exercise the jurisdiction though vested in it or failed to exercise the jurisdiction though vested on him or to correct the apparent error on the face of record or there is violation of the principle of natural justice. An instance showing the certiorari powers was exercised by the Hon’ble Supreme court in A. K. Kraipak v. Union of India, where the selection was challenged on the ground of bias. The Supreme Court delineated the distinction between quasi judicial and administrative authority. The Supreme Court exercising the powers issued the writ of Certiorari for quashing the action.

Prohibition The writ of Prohibition is issued by the court exercising the power and authorities from continuing the proceedings as basically such authority has no power or jurisdiction to decide the case. Prohibition is an extra ordinary prerogative writ of a preventive nature. The underlying principle is that ‘ prevention is better than cure .’ In East India Commercial Co. Ltd v. Collector of Customs , a writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding



is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise. Mandamus is a judicial remedy which is in the form of an order from a superior court to any Government agency, court or public authority to do or forbear from doing any specific act which that body is obliged to do under the law. The writ of mandamus is issued whenever the public authorities fail to perform the statutory duties confirmed on them. Such writ is issued to perform the duties as provided by the state under the statute or forbear or restrain from doing any specific act. The first case reported on the writ of mandamus was the *Middleton* case in 1573 wherein a citizen's franchise was restored. The writ of mandamus can be issued if the public authority vested with power abuses the power or acts mala fide to it. In Halsbury's Laws of England, it is mentioned that, "As a general rule the order will not be granted unless the party complained of has known what it was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."

Quo Warranto Quo Warranto means "by what warrant or authority". Quo Warranto writ is issued against the person of public who occupies the public seat without any qualification for the appointment. It is issued to restrain the authority or candidate from discharging the functions of public office. In *University of Mysore v. Govinda Rao*, the Supreme Court observed that the procedure of quo Warranto confers the jurisdiction and authority on the judiciary to control executive action in making the appointments to public offices against the relevant statutory provisions; it also protects a citizen

being deprived of public office to which he may have a right. Habeas Corpus

The Latin term Habeas Corpus means ‘ have the body’. The incalculable value of habeas corpus is that it enables the immediate determination of the right of the appellant’s freedom ". The writ of Habeas Corpus is a process for securing liberty to the party for illegal and unjustifiable detention. It objects for providing a prompt and effective remedy against illegal restraints. The writ of Habeas Corpus can be filled by any person on behalf of person detained or by the detained person himself. It is a judicial order issued by Supreme Court or High Court through which a person confined may secure his release. The writ of Habeas Corpus can be filed by any person on behalf of the other person. In *Icchu Devi v. Union of India*, the Supreme Court held that in a case of writ of Habeas corpus there are no strict observances of the rules of burden of proof. Even a post card by any pro bono publico is satisfactory to galvanize the court into examining the legality of detention. In *A. D. M. Jabalpur v. Shivakant Shukla*, it was observed that “ the writ of Habeas Corpus is a process for securing the liberty of the subject by affording an effective means of immediate relief from unlawful or unjustifiable detention whether in prison or private custody. By it the High Court and the judges of that court at the instance of a subject aggrieved command the production of that subject and inquire into the cause of his imprisonment. If there is no legal justification for that detention, then the party is ordered to be released. "

1. 5 Constitutional provisions: The makers of the Constitution have adopted the English remedies in the Constitution under Articles 32 and 226. There has been specifically made provisions in the Constitution which empowers the Supreme Court and High Courts to

issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The fundamental rights which are inalienable sacrosanct in nature and character which were conceived in national and public interest could be illusory if there is no constitutional machinery provided for its enforcement. Unless such constitutional remedies for its enforcement is not provided the rights guaranteed by part III of the Constitution cannot be ever implemented by the citizens. Article 32 contained in Part III is itself a fundamental right given to the person under the Constitution. Similarly Article 226 of the Constitution is conferred on the High Courts to exercise its prerogative writs which can be issued against any person or body of person including the government. The distinction between the two remedies is very negligible. The remedy under Article 32 is confined to enforcement of fundamental rights whereas Article 226 is available not only against the enforcement of fundamental rights but also for any other purpose. Thus the constitution provides the discretionary remedies on the High Court and the Supreme Court. In the absence of the provisions of such remedies no one can enforce its rights given. Thus wherever there is a right there must be a remedy for it. Thus it should satisfy the maxim, 'ubi jus ibi remedium.' One of the principle makers of the constitution, Dr. Ambedkar has given the prime importance to Article 32 among all other articles from the Indian Constitution. He has referred that, " It is the very soul of the Constitution and the very heart of it" In *Devilal v. STO*, it has been marked that, " There can be no doubt that the Fundamental Rights, guaranteed to the citizens are a significant feature of our Constitution and the High Courts under Article 226 are bound to protect these Fundamental Rights. " Justice

Subbarao in the case of *Basheshwar Nath v. Commissioner, Income Tax*, stated that, “ A large majority of people are socially poor educationally backward and politically yet not conscious of their rights, cannot be pitted against the state or the institution or they cannot be put on equal status with the state or large organisations. The people are requires to be protected from themselves. It is therefore the duty of the court to protect their rights and interests. Fundamental rights are therefore transcendental in nature and created and enacted in national and public interest and therefore they cannot be waived. "In *Daryao v. State of U. P.* , it was held that the right to obtain a writ must equally be a fundamental right when a petitioner presents the case. Thus, it cannot merely be considered as an individual’s right to move the Supreme Court but it is also the duty and responsibility of the Supreme Court to protect the fundamental rights. 1. 6 Role of writs in administrative actions: Now as far as the role of the writs is concerned, let us go by illustration over the cases on discretion. Conferment of discretionary powers has been accepted as necessary phenomena of modern administrative and constitutional machinery. Law making agency legislates the law on any subject to serve the public interest and while making law, it has become indispensable to provide for discretionary powers that are subject to judicial review. The rider is that the Donnie of the discretionary power has to exercise the discretion in good faith and for the purpose for which it is granted and subject to limitations prescribed under the Act. The Courts have retained their jurisdiction to test the Statute on the ground of reasonableness. Mostly, the courts review on two counts; firstly whether the statute is substantively valid piece of legislation and, secondly whether the

statute provides procedural safeguards. If these two tests are not found, the law is declared ultra vires and void of Article 14 of the Constitution. Beside this, Courts control the discretionary powers of the executive government being exercised after the statutes have come to exist. Once they come into existence, it becomes the duty of the Executive Government to regulate the powers within limitations prescribed to achieve the object of the Statute. The discretionary powers entrusted to the different executives of the Government play substantial role in administrative decision making and immediately the settled principles of administrative law trap the exercise of powers. If these discretionary powers are not properly exercised, or there is abuse and misuse of powers by the executives or they take into account irrelevant consideration for that they are not entitled to take or simply misdirect them in applying the proper provision of law, the discretionary exercise of powers is void. Judicial review is excluded when it is found that executives maintain the standard of reasonableness in their decisions. Errors are often crept in either because they would maintain pure administrative spirit as opposed to judicial flavour or that they influence their decisions by some irrelevant considerations or that sometimes, the authorities may themselves misdirect in law or that they may not apply their mind to the facts and circumstances of the cases. Besides, this aspect, they may act in derogation of fundamental principles of natural justice by not conforming to the standard or reasons and justice or that they do not just truly appreciate the existence or non existence of circumstances that may entitle them to exercise the discretion. “ The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to

consider relevant matter nor should they take into account considerations that are wholly irrelevant or extraneous. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters though the propriety adequacy or satisfactory character of these reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts. " The role of writs is also sensibly laid down in a famous Padfield's case: In England in earlier days the Courts usually refused to interfere where the Government or the concerned officer passed what was called a non-speaking order, that is, an order which on the face of it did not specify the reasons for the orders. Where a speaking order was passed the Courts proceeded to consider whether the reasons given for the order or decision were relevant reasons. Where there was a non-speaking order they used to say that it was like the face of the Sphinx in the sense that it was incurable and therefore hold that they could not consider the question of the validity of the order. Even in England the Courts have travelled very far since those days. They no longer find the face of the Sphinx inscrutable.

Application of the Writ of Certiorari The writ of Certiorari is basically issued against the statutory bodies exercising judicial or quasi judicial powers. Such writ is issued against the authorities namely the government and the courts or other statutory bodies who have power to determine and decide the lis

between the parties. In deciding such issues if the decision making order is passed without any authority or has passed the order in exercise of such authority or has committed an error of law and facts the high court is empowered to correct such error of the lower court or government authorities. Certiorari may apply when the administrative or executive authority fails to observe their duty to act fairly with respect to the administrative functions. The writ of Certiorari may also be issued against a subordinate tribunal even if the decision impugned is pronounced. A leading case of *Ryots of Garabandho v. Zamindar of Parlakimedi*, was the first decision on the writ of Certiorari. Application of the Writ of Mandamus The writ of mandamus is ordered when the statutory authorities who entrusted with the duties fail to discharge its obligatory duty. It may be applied when the government authorities vested with absolute powers fail to perform their administrative and statutory duties. In *Ratlam Municipal Council v. Vardichand*, on account of the public nuisance created in the area by the corporation in not maintaining the drainage system and the dirty water stinking had clogged around which obviously created nuisance at the hands of municipality for not discharging the duties under the act. As a result the residents of Ratlam municipality moved the Sub-divisional magistrate under section 133 of Code of Criminal Procedure, 1973 for abatement of nuisance and the court issued the directions that, “ Judicial discretion when facts for its exercise are present has a mandatory import. Therefore when the Sub-Divisional Magistrate, Ratlam, has before him information and evidence which disclose the presence of public nuisance, considers it lawful to remove such obstruction. This is a public duty implicit in the public power to be

exercised on behalf of the public and is pursuant to public proceeding. "

**Application of the Writ of Prohibition** The writ of Prohibition is issued essentially against the government or its authorities when they are not conferred with the power or jurisdiction to decide the dispute. The court by virtue of this power restrains the authority to exercise such powers which are not given to the authority. **Application of the Writ of Quo Warranto** The high Court would exercise the power of Quo Warranto against the public authority or government who acts contrary to the provisions of the statute and restrains the authority or public servant from usurping the public office on account of lack of qualification. It is a means of asserting sovereign right. In *Sonu Sampat v. Jalgaon Borough Municipality*, " If the appointment of an officer is illegal, everyday that he acts in that office, a fresh cause of action arises and there can be therefore no question of delay in presenting a petition for quo warranto in which his very, right to act in such a responsible post has been questioned. " **Application of the Writ of Habeas Corpus** The writ of Habeas Corpus is a writ issued in order to protect the liberty and freedom which is conceived to be very vital. It is issued against the wrongful detention or confinement through the police authority. By virtue of this writ the police authorities or other such statutory authorities are empowered to bring the custody of the person who has been wrongfully detained by the court of law. In the case of *State of Bihar v. Kameshwar Singh* it was stated that, the writ of Habeas Corpus is in the nature of an order for calling upon the person who has detained or arrested another person to produce the latter before the court, in order to let court know on what ground he has been confined and to set him free if there is no legal justification for the



imprisonment . One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of article 21 secured, is to mulct its violators in the payment of monetary compensation.

Chapter II. Res Judicata Res Judicata is a phrase which has been evolved from a Latin maxim, which stand for ‘ the thing has been judged’, meaning there by that the issue before the court has already been decided by another court, between the same parties. Therefore, the court will dismiss the case before it as being useless. Res Judicata as a concept is applicable both in case of Civil as well as 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. And, therefore, the same case cannot be taken up again either in the same or in the different Court of India. This is just to prevent them from multiplying judgments, so a prevailing plaintiff may not recover damages from the defendant twice for the same injury. For making Res Judicata binding, several factors must be met up with: - identity in the thing at suit; - identity of the cause at suit; - identity of the parties to the action; - identity in the designation of the parties involved; - whether the judgment was final; - whether the parties were given full and fair opportunity to be heard on the issue. Regarding designation of the parties involved, a

person may be involved in an action while filling a given office and may subsequently initiate the same action in a differing capacity. In that case Res Judicata would not be available as a defense unless the defendant could show that the differing designations were not legitimate and sufficient.

Therefore, Res Judicata in a nut shell is a judicial concept wherein the Courts do not allow a petition to be filed in the same or to the other Court for the doctrine of Res Judicata would apply and the party would not be allowed to file the petition or to continue the petition (as the case may be). The sphere of Res Judicata is ever growing. Although the Civil Procedure does not apply to the proceedings other than suits. Whereas in Administrative Law, the concept of Res Judicata deals only in aspects related to the Writ Proceedings.

2. 1 Brief History and Origin of Res Judicata " 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. 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. 2. 2 Res Judicata as a concept under Civil Procedure Code 1908. The doctrine of Res Judicata in nations that have a civil law legal system is much narrower in scope than in common law nations. According to the dictionary meaning, 'Res Judicata' means a case or suit involving a particular issue between two or more parties already decided by a court.

Thereafter, if either of the parties approaches the same court for the adjudication of the same issue, the suit will be struck by the law of 'res judicata'. Section 11 of Code of Civil Procedure deals with this concept. It embodies the doctrine of Res Judicata or the rule of conclusiveness of a judgement, 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. The doctrine of Res Judicata is based on three Roman maxims: (a) Nemo debet lis vexari pro eadem causa which means that no man should be vexed (annoyed) twice for the same cause; (b) Interest reipublicae ut sit finis litium meaning thereby that it is in the interest of the state that there should be an end to a litigation; and (c) Res judicata pro veritate accipitur which bears the meaning as a judicial decision must be accepted as correct. The pre-requisites which are necessary for Res Judicata are: 1) There must be a final judgment; 2) The judgment must be on the merits; 3) The claims 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 have been represented by a party to the prior action. The provisions of Section 11 are not at all exhaustive even though it has very wide and enlarged amplitude. The section “ does not affect the jurisdiction of the Court” but “ operates as a bar to the trial” of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a Court, then

they are not competent i. e. they become barred to try the subsequent suit in which such issue has been raised. Thus, this doctrine of Res Judicata is a fundamental concept based on public policy and private interest. It is conceived in the larger public interest, which requires that every litigation must come to an end. It therefore, applies to civil suits, execution proceedings, arbitration proceedings, taxation matters, writ petitions, administrative orders, interim orders, criminal proceedings, etc. An ordinary litigation being a party or claiming under a party of a former suit cannot avoid the applicability of section 11 of C. P. C. as it is mandatory except on the ground of fraud or collusion as the case may be. The onus of proof lies on the party relying on the theory of Res Judicata. The provisions of section 11 of C. P. C. are “ not directory but mandatory”. The judgment in a former suit can be avoided only by taking recourse to section 44 of the Indian Evidence Act on the ground of fraud or collusion. Hon’ble Mr. Justice Das Gupta in Satyadhan Ghosal v. Deorajan Deb said that ‘ the principle of Res Judicata is based on the need of giving finality to the judicial decisions’. 2. 3 Over-view of Res Judicata as a concept under Administrative Law Basically, the Doctrine of Res Judicata is applicable to the Code of Civil Procedure. But, at times, in many other statutes there is a use of the doctrine. As we know that the work or the role played by the Administrative Law is that of a watch dog. The Administrative Law sees that there is no use of power which has a malicious intention. The Administrative Law is there to see that there is an improvement in the society without any hurdles and the administration performs its duty in an honest manner. In Administrative Law, the use of this doctrine is that, it administers as to how well the Judiciary does its work, how

efficiently the Judiciary disposes off the case and the doctrine makes itself applicable where there is more than one petition filed in the same or in the other court of India. The parties can file another suit in another court, just to harass and malign the reputation of the opposite party or can do so for receiving compensation twice from the different courts. Therefore, just to prevent such over-loads and extra cases in the court's kitty, Res Judicata holds a big responsibility and importance. A comparison of Res Judicata as a concept in between Administrative Law and the other laws. In Administrative Law, the doctrine works as a working principle and has been adopted or taken from Code of Civil Procedure. In C. P. C., as we have discussed above, Section 11 has a big role to be played in the civil courts of India. Even in International Law which is applicable in The International Court of Justice, there too Section 38 (1) (c) is dedicated towards the doctrine of Res Judicata. The Section reads as follows: 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. The principles of Res Judicata even apply to the Constitution matters. The rule of Res Judicata is basically a rule of private law but has been transposed into the area of writ proceedings as well. Thus, the person is debarred from taking one proceeding after another and urging

new grounds every time, in respect of one and the same ground every time causing harassment to the opposite party. Therefore, a subsequent writ petition cannot be moved against the judgment of a petition in a particular High Court. The judgment can be of any nature and of any High Court, but that order cannot be in any sense be challenged. The Criminal Law and to be more specific, Evidence Law also talks about the doctrine of Res Judicata but in the same context as that has been used in C. P. C. Therefore, apart from the Administrative Law and C. P. C., there are some few other laws which talk about the role of Res Judicata in the statute. 2. 4 The Nature of Res Judicata. The Doctrine of Res Judicata strives to strike a balance between the two largely separated poles. One pit assures an efficient judicial system that renders final judgments with certainty and prevents the inequity of a defendant having to defend the same claim or issue of law repeatedly. On the other hand, it protects the plaintiff's interest in having issues and claims fully and fairly litigated. A US Supreme Court Justice explained the need for this legal precept as follows: Federal courts have traditionally adhered to the related doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion). Under Res Judicata, a final judgment on the merits of an action precludes the parties . . . from re-litigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first cause. As this court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and by

preventing inconsistent decisions, encourage reliance on a judgment. The basic point involved in the nature of the doctrine of Res Judicata is that the doctrine tries to bring in natural and fair justice to the parties and that too by barring the other party to file a multiple number of suits either for justice or for harassing the other party. Res judicata includes two related concepts: claim preclusion, and issue preclusion (also called collateral estoppel), though sometimes Res Judicata is used more narrowly to mean only claim preclusion. Claim preclusion focuses on barring a suit from being brought again on a legal cause of action that has already been finally decided between the parties. Issue preclusion bars the re-litigation of factual issues that have already been necessarily determined by a judge or jury as part of an earlier claim. It is often difficult to determine which, if either, of these apply to later lawsuits that are seemingly related, because many causes of action can apply to the same factual situation and vice versa. Therefore, the nature of the doctrine of Res Judicata is to enable the Courts deliver the justice and then to dismiss or freeze the other active suits which are of the very same nature although is at different stage. Such a role enables the Court to dismiss the matter from its jurisdiction and also the jurisdiction of the other Courts which are at the same level. Also that Res Judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as it travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which it to challenge a judgment rather than trying to start a new trial, and once the appeals process is exhausted or waived, Res Judicata will apply even to a judgment that is contrary to law.

## 2.5 Scope of Res Judicata

### The Scope of Res Judicata

has very well been decided in the case of *Gulam Abbas v. State of U. P.* where the code embodies the rules of conclusiveness as evidence or bars as a plea of an issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially an issue becomes final. Section 11 does create any right or interest over the property but merely operates as a bar to try the issue ‘once again’. The Court is assumed and applied to all the judicial bodies working in India. The scope of an earlier judgment is probably the most difficult question that judges must resolve in applying *res judicata*. Sometimes merely part of a subsequent lawsuit will be affected, such as a single claim being struck from a complaint, or a single factual issue being removed from reconsideration in the new trial. The principle of *Res Judicata* has been held to be of wider application on the basis of the wider principle of the finality of decision by Courts of law and a decision under Section 12 of the U. P. Agriculturists Relief Act of 1934 was held to operate as *Res Judicata* Section 11 CPC which embodies the principle of *Res Judicata* has been held to be not exhaustive and even though a matter may not be directly covered by the provisions of that section the matter may still be *Res Judicata* on general principles. The scope of the principle of *Res Judicata* is not confined to what is contained in Section 11 but is of more general application. *Res Judicata* could be as much applicable to different stages of the same suit as to findings on issues in different suits. In the case of *Satyadhan Ghosal v. Smt. Deorajin Debi*, where the principle of *Res Judicata* is invoked in the case of the different stages of proceedings in the same suit the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the decision being reached as well as the specific provision made on matters



touching such decisions are some of the factors to be considered before the principle is held to be applicable. 2. 6 Exceptions to Res Judicata However, there are limited exceptions to Res Judicata that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions - usually called collateral attacks - are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or competence to issue it. A collateral attack is more likely to be available (and to succeed) in judicial systems with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognise the judgment of a foreign court. In addition, in cases involving due process, cases that appear to be Res Judicata may be re-litigated. An instance would be the establishment of a right to counsel. People who have had their liberty taken away (that is, imprisoned) may be allowed to be re-tried with a counselor as a matter of fairness. 2. 7 Judicial Pronouncements in relation to Res Judicata In the case of Jallur Venkata Seshayya vs. Thadviconda Koteswara Rao , a suit was filed in the Court for the purpose of declaring certain temples public temples and for setting aside alienation of endowed property by the manager thereof. A similar suit was dismissed by the Court two years ago and the plaintiffs here contended that it was the gross negligence on the part of the plaintiffs (of the previous suit) and hence the doctrine of Res Judicata should not be applied. But, the Privy Council said that finding of a gross negligence by the trial court was far from a finding of intentional suppression of the documents, which would amount, to want of bona fide or collusion on the part of the plaintiffs in prior suit. There being no evidence in the suit establishing either want of bona fide of

collusion on the part of plaintiffs as res judicata. In the case of Beliram and Brothers vs. Chaudari Mohammed Afzal it was held that where a minors suit was not brought by the guardian of the minors bona fide but was brought in collusion with the defendants and the suit was a fictitious suit, a decree obtained therein is one obtained by fraud and collusion within the meaning of the Indian Evidence Act, 1872, s. 44 and does not operate Res Judicata. The principle of Res Judicata in Code of Civil Procedure, 1908, s. 11 is modified by the Indian Evidence Act, 1872, s. 44 and the principles will not apply if any of the three grounds mentioned in s. 44 exists. General principles may not be applied in a way making Code of Civil Procedure, 1908, s. 11 nugatory. In the case of Rural Litigation And Entitlement Kendra vs. State of Uttar Pradesh, it was held that the writ petitions filed in the Supreme Court are not inter-party disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area must be permitted or stopped. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of Res Judicata. The Court was of the view that leaving the question open for examination in future would lead to unnecessary multiplicity of proceedings and would be against the interests of the society. It is mete and proper as also in the interest of the parties that the entire question is taken into account at this stage. Undoubtedly, the Environment (Protection) Act, 1986 has come into force with effect from 19 November 1986. Under this enactment, power became vested in the Central Government to take measures to protect and improve the environment.

These writ petitions were filed as early as 1983 more than three years before the enactment came into force. The principle of Res Judicata does not apply strictly to public interest litigations. The procedural laws are not fully applicable to public interest litigation cases. Where the prior public interest relates to illegal mining, subsequent public interest litigation to protect environment is not barred. In *Forward Construction Co. v. Prabhat Mandal*, the Supreme Court was directly called upon to decide the question. The apex court held that the principle would apply to public interest litigation provided it was a bona fide litigation. In another case of *Ramdas Nayak v. Union of India*, the court observed: It is a repetitive litigation on the very same issue coming up before the courts again and again in the grab of public interest litigation. It is high time to put an end to the same. These were few cases in which the Court pronounced its judgement either in favour or against the doctrine of Res Judicata.

2. 8 Failure to apply: When a subsequent court fails to apply Res Judicata and renders a contradictory verdict on the same claim or issue, if a third court is faced with the same case, it will likely apply a "last in time" rule, giving effect only to the later judgment, even though the result came out differently the second time. This situation is not unheard of, as it is typically the responsibility of the parties to the suit to bring the earlier case to the judge's attention, and the judge must decide how broadly to apply it, or whether to recognize it in the first place.

Conclusion \* The prerogative powers of writ jurisdiction conferred by the constitution for judicial review of administrative action is undoubtedly discretionary and yet unbounded in its limits. The discretion however should be exercised on sound legal principles. In this respect it is important to emphasize that the

absence of arbitrary power is the first essential of the rule of law upon which the whole constitution system is based. In a system governed by rule of law when discretion is conferred upon the executive authorities it must be based on clearly defined limits. Thus the rule of law from this point of view means that the discretion or the decision must be based on some principles and rules. In general the decision should be predictable and citizens should know where he is. If a decision is taken not on the basis of any principle or rules then such decision is arbitrary and is taken not in accordance with the rule of law. \* The Constitution is the law of the laws and nobody is supreme. Even the judges of Supreme Court are not above law and they are bound by the decisions which are the law of the land declared by them under the writ petitions. Thus, the constitutional remedies provided under the constitution operate as a check and keeps the administration of government within the bounds of law. \* The Doctrine of Res Judicata strives to strike a balance between the two largely separated poles. One pit assures an efficient judicial system that renders final judgments with certainty and prevents the inequity of a defendant having to defend the same claim or issue of law repeatedly. \* Res Judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as the suit travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which to challenge a judgment rather than trying to start a new trial. Once the appeals process is exhausted or waived, Res Judicata will apply even to a judgment that is contrary to law. \* The Doctrine of Res Judicata can be understood as something which restrains the either party to “ move the clock back” during the pendency of the proceedings. The extent of Res

Judicata is very-very wide and it includes a lot of things which even includes

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