
AN ANALYSIS OF DOCTRINE OF CONSTRUCTIVE RES JUDICATA AND ITS IMPACT ON FAIR HEARING RIGHTS

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ABSTRACT

The doctrine of constructive res judicata, codified in Explanation IV to Section 11 of the Civil Procedure Code (CPC)¹, extends the bar of res judicata to matters that might and ought to have been raised in a prior proceeding. While this judicial device aims to promote finality, efficiency, and prevent abuse of court processes, its expansive application has been criticized by legal scholars and researchers for undermining substantive justice, particularly where claims are foreclosed without meaningful adjudication. This paper examines the doctrinal basis, evolution, and contemporary application of constructive res judicata in India, juxtaposed with comparative perspectives from the United Kingdom, United States, and the European Court of Human Rights. The analysis highlights how rigid interpretation of the doctrine poses challenges to the fundamental right to a fair hearing under Article 21² of the Indian Constitution. Through a detailed study of case law, theoretical frameworks, and illustrations of instances of potential injustice, the paper argues for a calibrated, merit-sensitive application of the doctrine that harmonises judicial efficiency with constitutional guarantees. The paper attempts to propose a structured reform model which aims at balancing finality and fairness in civil adjudication.

Keywords: Res judicata; Constructive res judicata; Issue estoppel; Access to justice; Fair hearing; Article 21; Civil Procedure Code; Comparative jurisprudence; Claim preclusion.

¹ Code of Civil Procedure, 1908

² The Constitution of India, 1950

1. Introduction

Res judicata is a foundational doctrine in civil adjudication, grounded in the principles of finality, certainty, and judicial economy. The doctrine seeks to prevent the re-litigation of issues that have already been decided, thereby protecting courts from repetitive claims and safeguarding opposing parties from harassment. Over time, the Indian judiciary expanded this principle through the doctrine of constructive res judicata, articulated in Explanation IV to Section 11 of the Civil Procedure Code (CPC). The expansion was intended to prevent litigants from splitting claims or withholding issues strategically for later litigation. However, the legal fiction embedded in constructive res judicata has generated both practical complexities and theoretical concerns. On one hand, it enhances judicial efficiency; on the other, it risks denying substantive justice where claims are extinguished without being heard on their merits. The tension between procedural efficiency and fairness is particularly acute in constitutional litigation, service matters, and cases involving unrepresented or marginalised parties.

1.1 Doctrinal Basis in India

Section 11 CPC lays the doctrinal foundation for res judicata, barring courts from trying a matter directly and substantially in issue in a former suit between the same parties, provided the matter was adjudicated by a competent court. Explanation IV expands this principle to matters that might and ought to have been raised earlier but were not. Indian courts have interpreted this explanation broadly in several landmark decisions. In the case of *Forward Construction Co. v Prabhat Mandal*³, the Supreme Court reinforced the importance of preventing fragmented litigation, even at the cost of barring issues that were not actually adjudicated. In the case of the *State of U.P. v Nawab Hussain*⁴, the Court applied constructive res judicata strictly to bar a dismissed police officer from raising new grounds in a subsequent proceeding. *Daryao v. State of U.P.*⁵ applied res judicata even to writ-petitions. Conversely, in *Workmen v Cochin Port Trust*⁶, Court emphasised caution, noting that procedural principles should not override substantive rights. In the case of *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra*⁷, Supreme Court of India held that the principles of constructive res judicata apply to writ petitions filed under Articles 32 and 226 of the

³ *Forward Construction Co. v. Prabhat Mandal*, (1986) 1 SCC 100 (India)

⁴ *State of U.P. v. Nawab Hussain*, (1977) 2 SCC 806 (India).

⁵ *Daryao v. State of U.P.*, AIR 1961 SC 1457 (India).

⁶ *Workmen v. Board of Trustees of the Cochin Port Trust*, AIR 1978 SC 1283 (India)

⁷ *Direct Recruit Class II Eng'g Officers' Ass'n v. State of Maharashtra*, AIR 1990 SC 1607 (India)

Constitution. *Muthanna C. A. Vidhish*⁸ demonstrates inconsistent judicial approaches in service and writ matters with respect to section 11, explanation IV of CPC. The inconsistent judicial approach reveals a deeper tension in balancing public interest in finality with the individual's right to be heard.

1.3 Historical Evolution and Jurisprudential Foundations

The origins of constructive res judicata can be traced to Roman law, which emphasised the finality of litigation, and later to English common law, where repeated suits were discouraged through rules like cause of action estoppel. As courts confronted strategic litigation and incomplete pleadings, they gradually evolved a more robust doctrine to prevent parties from withholding claims. In India, the adoption of constructive res judicata was influenced by colonial jurisprudence and the need to maintain procedural discipline in an already burdened judicial system. However, unlike common law jurisdictions, India codified the doctrine in the CPC, giving it statutory authority. Legal scholars have debated whether codification leaves sufficient flexibility for courts to adopt a fairness-based approach. While proponents argue that constructive res judicata is essential to prevent exploitation of judicial processes, critics contend that its mandatory application often leads to unjust outcomes, particularly where claims are dismissed without a full hearing.

2. Issue Estoppel vs. Constructive Res Judicata

The discussion of issue estoppel becomes indispensable in any study of constructive res judicata because both doctrines address the problem of repeated litigation, albeit in different ways. Issue estoppel, a common law principle rooted in English jurisprudence, restricts parties from re-litigating issues that have already been conclusively determined in earlier proceedings. Its narrower scope contrasts with the broader sweep of constructive res judicata under Indian law, which extends even to matters that were never argued but could have been raised. By examining issue estoppel, we gain a comparative lens to evaluate whether constructive res judicata strikes the right balance between finality and fairness, or whether the Indian position has tilted excessively towards procedural rigidity.

⁸ Muthanna C. A. Vidhish, A Comprehensive Analysis of Applications and Implications of Res Judicata, 7 INT'L J.L. MGMT. & HUMAN. 435 (2024).

The roots of issue estoppel lie in English common law. Its foundations trace back to the *Duchess of Kingston's Case* (1776), which held that facts once adjudicated cannot be contested again. The modern doctrine was firmly articulated in *Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No. 2)* [1967] 1 AC 853 (HL), where the House of Lords distinguished issue estoppel from cause of action estoppel. It has since been adopted across common law jurisdictions, including India, Canada, and Australia.

Issue estoppel and constructive res judicata, though related, are distinct doctrines. Issue estoppel arises when a particular issue of fact or law has been directly decided between the parties in prior proceedings. It prevents re-litigation of the same issue, but only in relation to matters actually adjudicated. The focus is on finality of specific determinations. Unlike constructive res judicata, it does not penalize parties for failing to raise claims; it only locks in findings already reached. Constructive res judicata, on the other hand, is broader. It deems matters that 'could and should' have been raised in earlier litigation as already decided, even if never argued. It is thus a legal fiction which penalises omission, aiming to prevent piecemeal litigation.

In comparative terms, issue estoppel is narrower and more flexible (often allowing exceptions for fairness), while constructive res judicata is harsher, barring claims even if omission resulted from mistake or lack of awareness. The Indian approach under Section 11 CPC is more rigid and the constructive res judicata suppresses substantive justice while issue estoppel balances finality with fairness.

3. Comparative Perspectives

Internationally, courts have grappled with the tension between finality and fairness. The United Kingdom follows the rule in *Henderson v Henderson*⁹, which prohibits parties from raising issues they could have advanced in earlier proceedings. Yet, subsequent judgments such as *Johnson v Gore Wood*¹⁰ have emphasised a nuanced, merits-based approach, allowing exceptions where strict application would be unjust. In the United States, the doctrine of claim preclusion (the analogue of constructive res judicata) was recognized for the first time in the case of *Cromwell v. County of Sac*¹¹ is applied more rigidly, as seen in *Federated Department*

⁹ *Henderson v. Henderson* (1843) 67 ER 313 (UK Ch D).

¹⁰ *Johnson v. Gore Wood & Co* [2002] 2 AC 1 (HL) (UK).

¹¹ *Cromwell v. County of Sac* 1876.

*Stores v Moitie*¹². In *Parklane Hosiery Co. v. Shore*¹³, court specifically addressed the application of nonmutual offensive collateral estoppel in federal courts. *Olivia Guidry*¹⁴ critiques Louisiana's Article 425, CPC as overbroad, and impermissible expansion of res judicata will substantially deny justice. However, American courts recognise exceptions where new evidence emerges or where earlier proceedings suffered from procedural defects. The European Court of Human Rights, through landmark cases like *Brumărescu v Romania*¹⁵, has underscored that procedural doctrines cannot override the fundamental right to a fair trial under Article 6. *Stubbings v. United Kingdom*¹⁶ stressed that procedural rules must not extinguish substantive justice.

These comparative perspectives demonstrate a global trend towards balancing judicial efficiency with fairness, indicating that a strict, uncompromising application of constructive res judicata is neither universal nor ideal.

4. Constructive Res Judicata and Article 21

Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which encompasses the right to a fair hearing. The Supreme Court has repeatedly affirmed that fairness is central to the administration of justice. Constructive res judicata, when applied rigidly, undermines this constitutional guarantee by treating unraised issues as finally adjudicated. This can occur due to ignorance of law, inadequate legal representation, or socioeconomic barriers. The doctrine may also foreclose constitutional remedies under Articles 32 and 226, as seen in several decisions where writ petitions were dismissed on technical grounds without examining substantive rights¹⁷. By foreclosing matters that were never substantively heard, constructive res judicata runs contrary to the principles of natural justice, particularly *audi alteram partem*, and encroaches upon the right to a fair trial, which stands protected as a fundamental right under Article 21 of the Indian Constitution. Legal scholars¹⁸ distinguish

¹² *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394 (1981) (U.S.).

¹³ *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979) (U.S.).

¹⁴ *Olivia Guidry*, *Res Judica-duh! The Impermissible Expansion of Claim Preclusion through Louisiana Code of Civil Procedure Article 425*, 82 LA. L. REV. 1181 (2022).

¹⁵ *Brumărescu v. Romania*, App. No. 28342/95, 33 Eur. H.R. Rep. 35 (2000).

¹⁶ *Stubbings v. United Kingdom*, App. No. 22083/93, 23 Eur. H.R. Rep. 213 (1996).

¹⁷ *Miheer Jain*, *Analysis of Constructive Res Judicata with Reference to Writ Jurisdiction*, 3 INT'L J.L. MGMT. & HUMAN. 913 (2020).

¹⁸ *Vansh Saha*, *Doctrine of Res Judicata under Section 11 CPC. A Detailed Examination of Its Scope, Constructive Res Judicata, and Distinction from Issue Estoppel*, 2 LAWFOYER INT'L J. DOCTRINAL LEGAL RSCH. 338 (2024).

constructive res judicata from issue estoppel, and strongly argue that the Indian version is harsher and less flexible. The procedural doctrines must be subordinate to constitutional principles, especially in matters involving fundamental rights, extending the application to PIL¹⁹, and arbitration²⁰ cases. A doctrinal recalibration is therefore essential to ensure that constructive res judicata does not impede access to justice. Below is an attempt to demonstrate a few possible scenarios which lead to injustice upon application of constructive res judicata.

4.1 Illustrations of Injustice

Several scenarios reveal how rigid application of constructive res judicata leads to injustice:

1. **Ignorance of Counsel:** Litigants may be bound by errors of counsel, leading to permanent loss of rights.
2. **Discovery of New Evidence:** New facts emerging after the earlier proceeding may be barred from consideration.
3. **Marginalised Litigants**(Indigent person): Parties lacking resources or legal awareness may unknowingly omit claims, resulting in injustice.
4. **Constitutional Claims:** Fundamental rights issues may be dismissed under constructive res judicata without substantive analysis.
5. **Mistaken Interpretation of Law:** Where legal understanding evolves, litigants may be unfairly penalised for earlier omissions.
6. **Procedural Complexity:** Complex litigation may lead to inadvertent omission of claims, which are later barred unjustly.

5. Conclusion and Recommendations

The doctrine of constructive res judicata, while essential for preventing fragmented litigation, must be applied with sensitivity to fairness and constitutional rights. Indian courts should adopt

¹⁹ Gurpreet Singh, Applicability of Res Judicata in the Public Interest, Arbitration and Income Tax Proceedings, 10 INDIAN J.L. & JUST. 267 (2019).

²⁰ Ritti Ramya & Ujjwal Kumar Singh, Conclusiveness of Judgment in Alternative Dispute Resolution, 7 INT'L J.L. MGMT. & HUMAN. 2937 (2024).

a merits-based framework, modelled on modern UK jurisprudence, allowing exceptions where strict application would result in injustice. Legislative reform may also be warranted to incorporate explicit fairness-based exceptions into Section 11 CPC. Judicial training and awareness can further ensure consistent, balanced application. Ultimately, constructive res judicata must serve as a shield against abusive litigation—not a sword to extinguish legitimate claims.

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