
REPRESENTATIVE SUITS & THE RES JUDICATA TRAP: THE CASE FOR AN ADEQUACY STANDARD IN ORDER I RULE 8 CPC

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ABSTRACT

Indian civil procedure allows for thousands of absent litigants to be bound by judicial decisions through representative suits under Order I Rule 8 of the Code of Civil Procedure, 1908. What goes unnoticed in this framework is that it creates a structural danger. Once leave for representation and notice are formally granted, even grossly negligent or incompetent representation can bind the entire class through res judicata. The ongoing procedural dispute in *Bhagwan Shri Krishna Virajman v. Anjuman Islamia Committee of Shahi Masjid Idgah*, concerned about which among the plaintiff suits should represent the entire body of the devotees, exposes the absence of any objective standard for selecting an adequate representative. It highlights the consequential risks of elevating one suit to binding status without any rigorous scrutiny. This paper argues that to prevent this 'Res Judicata Trap,' Indian courts must move beyond the existing 'same interest standard'. They should incorporate an objective 'adequacy of representation' requirement both at the stage of selecting the lead representative and at the stage of determining the binding effect of judgments. Various judicial precedents have endorsed the 1976 Amendment of CPC, allowing the interpretation of 'same interest' broadly. It has emphasized procedural efficiency and finality. However, no precedent has sufficiently interrogated whether formal compliance with notice and leave meaningfully safeguards the substantive interests of absent parties. Drawing from U.S. class action jurisprudence in Federal Rules of Civil Procedure and landmark decisions such as *Hansberry v. Lee* and *Gonzales v. Cassidy*, this paper proposes a two-stage inquiry into the adequacy of representation: first, a pre-suit adequacy standard as a mechanism to determine which among competing suits should serve as the lead representative action; and second, a due process review of decisions post-judgment, where the representation was grossly negligent or inadequate. Through this inquiry, this paper seeks to fix the tension between procedural finality and demands of fairness in the interests of the absent represented class.

Keywords: Order I Rule 8 CPC, Representative Suits, Res Judicata, Adequacy of Representation, Due Process

I. Introduction

“The general rule, which requires the plaintiff to bring before the court all the parties interested in the subject in question, admits of exceptions. The liberality of this court has long held, that there is of necessity an exception to the general rule, when a failure of justice would ensue from its enforcement.”¹

This early 19th-century observation by the English Court of Chancery in *Meux v Maltby* (1818), operates as an exception to the general principle that all persons interested in a suit shall be made parties thereto. It laid the foundation for the modern representative suit, ensuring that numerous parties with a shared grievance and common interest could seek redress through a lead representative. In India, this principle is codified under Order 1 Rule 8 of the Code of Civil Procedure (CPC). This paper provides a critical analysis of the Indian framework on representative suit, its interaction with the principle of Res Judicata, and US practices concerning this framework.

This paper *firstly*, traces the historical origin of the rule from English Chancery practices and discussed the 1976 Amendment which laid down the ‘same interest standard’. *Secondly*, it analyzes the procedural mechanism of Order 1 Rule 8, delving into the mandatory requirements of representative suits for its decree to operate as Res Judicata under Section 11, Explanation VI of the CPC. *Thirdly*, it interrogates the ‘Res Judicata Trap’ wherein the law offers no escape from the binding effect of the judgment in cases of gross negligence and inadequate representation, unless actual fraud or collusion is proven. *Finally*, it presents a comparative analysis with the U.S. “Adequacy Standard”. By examining the U.S. constitutionalization of representation, the paper argues that Indian practice must move beyond ‘same interest standard’ to include ‘adequacy standard’.

II. Historical Origin And Development of Representative Suit

The English Chancery Practices and the Problem of Numerous parties

Historically, the Common Law courts of England and Wales adhered to a rigid rule of

¹ *Meux v Maltby* (1818) 2 Swans 277, 281-282. [UK]

compulsory joinder. Every person whose interests might be affected by a decree had to be named as a party to the suit and a mere description of them would not suffice². However, in cases involving village commons, or parishioners of a church, medieval group litigations existed³. But as commerce and communal living evolved during Industrial Revolution, new forms of social organization emerged. The Chancery equity courts had to then determine a lowest common denominator for bringing such claims. It first permitted a looser series of transactions among the ‘members of the group’ and, finally, only the sharing of common interest among the ‘members of a class’.⁴ The modern procedure on representative suits, therefore developed by Court of Chancery over centuries, relaxing the rigidity of bringing collective class claims.⁵ Order I Rule 8 CPC is essentially the codification of this equitable exception in Indian jurisprudence.

The 1976 Amendment: Broadening the Scope of "Same Interest"

The most transformative moment in the Indian history of this rule was the CPC (Amendment) Act, 1976⁶. Prior to this, judicial interpretation often conflated ‘same interest’ with the ‘same cause of action’. The 1976 Amendment, based on the 54th Law Commission Report⁷, added Explanation to the Rule 8 of Order I, thus clarifying that it is not necessary for all persons to have the same cause of action. It clarified that the parties only needed to share “community of interest”, which is said to exist where there is concerted action or a common object.⁸ This interpretation was later solidified by the Supreme Court in *Chairman, Tamil Nadu Housing Board v. T.N. Ganapathy (1990)*⁹, which held that a common interest in the subject matter is the only prerequisite for a representative suit, even where there are separate causes of action or separate transactions.

III. Res Judicata in Representative Suits

Explanation VI to Section 11¹⁰ read with Sub-rule (6) of Rule 8 of Order 1¹¹, binds the

² *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47, [2024] 2 WLR 45, para 27.

³ Stephen C Yeazell, *From Medieval Group Litigation to the Modern Class Action* (Yale University Press 1987) ch 2, 38-71.

⁴ *Ibid.*

⁵ *Wolverhampton* (n 2) para 28.

⁶ The Code of Civil Procedure (Amendment) Act 1976 (Act 104 of 1976).

⁷ Law Commission of India, *54th Report on the Code of Civil Procedure, 1908* (1973)

⁸ *Ibid* para 1-P.5

⁹ (1990) 1 SCC 608.

¹⁰ Code of Civil Procedure, 1908, s 11 Explanation VI.

¹¹ *Ibid* Order I Rule 8(6).

represented party to the decision of the representative suit previously decided, when they are claiming on the same issues under the same titles. This decision of the representative suit operates as *res judicata* over any other subsequent litigation. Sub rule (5) of Rule 8 Order 1¹² gives power to the court to substitute parties having the same interests when any representing party does not proceed with due diligence during the proceedings. And any party may also under sub rule (3)¹³ apply to the court to be made a party thereto during the proceedings. But there are essential conditions before a *res judicata* may operate on such decision in a representative suit.

1. *The Mandatory nature of Leave*

As per Sub-rule 1(a) of Rule 8, the person is required to apply before the court seeking permission *to sue or be sued* in a representative capacity for all persons so interested.¹⁴ If a leave is not sought under subrule 1, it does not bind the alleged represented parties and the order only operates as *res judicata* between the only parties present before the court in that case.¹⁵

In the recent Allahabad High Court order in the case of *Bhagwan Sri Krishna Virajman*¹⁶, the petitioners sought leave of the court to sue defendants as representatives of the Muslim community. It was contended by the defendants that under Rule 8(1)(a), leave has to be sought only by the party intending to represent their common interest; that it cannot apply for leave to force the opposite parties to sue in a representative capacity. The honourable High Court, referring to sub-rule 1(b), clarified that the Court had the power to direct the filing of representative suit where conditions of Order 1 Rule 8 (a) are applicable.¹⁷

But given that a party may represent the same interest of all the parties, the question arises as to which party among the many before the court, should represent that same community of interest. The same issue is pending before the Supreme Court in the case of *Sri Krishna*

¹² *Ibid* Order I Rule 8(5).

¹³ *Ibid* Order I Rule 8(3).

¹⁴ C K Takwani, *Civil Procedure* (10th edn, Eastern Book Company 2024).

¹⁵ *Kalyan Singh v. Chhoti* (1990) 1 SCC 266.

¹⁶ *Bhagwan Shri Krishna (Thakur Keshav Dev Ji Maharaj) Virajman & Ors v Anjuman Islamia Committee Of Shahi Masjid Idgah & Ors*, Original Suit No. 17 of 2023, order dated 18.07.2025 (Allahabad HC)

¹⁷ *Ibid*.

Virajman case.¹⁸

2. *Essentiality of Notice*

The second condition for res judicata to operate to bind the judgement on all the parties represented, is the service of the notice either in person or by public advertisement like newspaper, under the subrule (2) is mandatory.¹⁹ It has to be given at the direction of the court and at the expense of the party so applying for representation.²⁰ If no such notice is given, such a suit lapses its representative character and it is not binding on the parties being represented having same interest.²¹

3. *Presence of Fraud or Collusion*

The other question that arises is whether a party can challenge the judgement when both of the conditions of leave under subrule (1) and notice under subrule (2) have been fulfilled. There is only one recourse that a represented party may take if it is aggrieved by the decision of the court. It may apply under §38 of Bharatiya Sakshya Adhinyam²² [earlier §44 of the Indian Evidence Act²³] to set aside the decree on one of the following grounds namely, that the court was incompetent or the decree was obtained through fraud or collusion. The case of *C.H. Madhava Rao v. South India Educational Trust* (2023)²⁴ defined that for or collusion to be established under §38 BSA, the intention of the parties to deceive and the injury to the deceived persons has to be proved.²⁵ But in cases where the representing party may show gross negligenc, or a very high level of inadequacy, without collusion or fraud, in litigating and carrying out the proceedings, should res judicata apply? Considering the effect, a representative judgement has on the broad range of innumerable parties represented, these facets of the suit become highly relevant.

¹⁸ 'Krishna Janmabhoomi Case | Dispute in Supreme Court Over Which Suit Represents Entire Devotees' LiveLaw (24 November 2025) <<https://www.livelaw.in/top-stories/krishna-janmabhoomi-case-dispute-in-supreme-court-over-which-suit-represents-entire-devotees-310996>> accessed 7 January 2026. The HC order is appealed by plaintiffs of suit no. 1 contending that elevating suit no. 17 as representative suit was unfair to other parties, that it should represent the common interests since it was the first one to file the dispute, while other suit were copycats.

¹⁹ CK Takwani (n 14).

²⁰ Ibid.

²¹ *Kumaravelu Chettiar v Ramaswami Ayyar* 1933 SCC OnLine PC 33: (1932-33) 60 IA 278.

²² Bharatiya Sakshya Adhinyam (BSA) 2023, §38.

²³ Indian Evidence Act 1872 (repealed), §44.

²⁴ 2023 SCC OnLine Mad 8782

²⁵ *Ibid* para 37.

IV. The Res Judicata Trap and Comparative Frameworks

From the discussion on res judicata in representative suits in the previous section, two procedural enquiries surface with respect to application of res judicata on such suits.

- i. One that that there is no specific procedural path to determine which party, among the many present before the court in the same interest matter, should represent the community of interest, in other words, which suit should be the lead representative suit. The absence of such a procedure may often lead to the selection of an inadequate and incompetent party.
- ii. And *two*, should a representative suit be barred by res judicata when the representative was highly inadequate or grossly negligent, in carrying out such proceedings, when a challenge is brought on these grounds.

A comparative analysis with the US positions on this aspect is helpful to determine how this res judicata trap can be avoided.

1. Beyond Same Interest: The US Adequacy Standard in choosing representative suit

In the case of *Sri Krishna Virajman*, the order of the Allahabad High Court allowing the plaintiffs in suit no.17 to be treated as representatives of the entire devotees of Lord Shri Krishna was challenged before the Supreme Court²⁶, which is still pending. It was contended by plaintiffs in suit no. 1 that they were the first parties to file the suit concerning the case, that the other suits were merely ‘copycat’ suits and that it was improper for the court to elevate suit no. 17 as a representative suit.²⁷ They contended that there must be a proper process to be followed by courts, which should entail putting all suits together, hearing all plaintiffs and then coming up with a solution as to which suit would be the appropriate to be made the lead representative under Order 1 Rule 8.²⁸ Therefore, it is apparent that there is a requirement for an objective criteria or standards for selecting the lead representative suit.

In the UK, representative suits are governed by Civil Procedure Rule (CPR) 19.8.²⁹ The UK framework is fundamentally similar to the Indian CPC framework, in as much as it requires the

²⁶ Live Law ‘*Krishna Janmabhoomi Case*’ (n 18).

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Civil Procedure Rules 1998 (UK), r19.8.

fulfilment of the ‘same interest’, mandatory court permission, notice to the represented class, and binding nature of the judgement. While the US federal system, unlike the Indian CPC Order I:8 and UK CPR 19.8, lays down the “*Adequacy Standard*”, which demands a proactive inquiry into the character and capability of the representation. Federal Rule of Civil Procedure [FCRP] 23(a)(4)³⁰ mandates that a court can only certify a class if “*the representative parties will fairly and adequately protect the interests of the class.*” Furthermore, Rule 23(g)³¹ introduces a mandatory quality control check on the legal counsel representing such interest. It requires the court to evaluate the lawyer’s ability in identifying potential claims, his/her experience in handling representative suits, their knowledge of law, the resources they are ready to commit, and prior work in complex litigation. By codifying the appointment of class counsel as a judicial duty,³² the US jurisdiction ensures the right of fair hearing of the absent members of the represented class. It protects against a financially weak representative or an incompetent lawyer who may not represent the interest of the class in the best possible manner.

2. Indian jurisprudence on Inadequacy and Gross Negligence: The Res Judicata Trap

The constant position of the Indian courts has been that parties cannot bring the subsequent suit even when the earlier suit was tried grossly negligent. In *TV Seshayya v TK Rao, 1936*³³, the Privy Council held that the principle of §44 of the Indian Evidence Act (IEA) cannot be extended to cases of gross negligence, unless fraud or collusion is properly inferred from the facts.³⁴ And hence, the principle of res judicata applies to such suit, binding all the represented parties to the judgment leading to a trap against bringing any suit on such same interest matter.

³⁰ Federal Rules of Civil Procedure (US), r 23(a)(4). [Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (4) the representative parties will fairly and adequately protect the interests of the class.]

³¹ *Ibid* r 23(g) Class Counsel.

- 1) *Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:*
 - a. *must consider:*
 - i. *the work counsel has done in identifying or investigating potential claims in the action;*
 - ii. *counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;*
 - iii. *counsel's knowledge of the applicable law; and*
 - iv. *the resources that counsel will commit to representing the class;*
 - b. *may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;*

³² *Ibid* FCRP 23(g)(4) Duty of Class Counsel: Class counsel must fairly and adequately represent the interests of the class.

³³ *Talluri Venkata Seshayya v Thadikonda Kotiswara Rao* 1936 SCC OnLine PC 66 : ILR 1937 Mad 263.

³⁴ *Ibid*.

While in an earlier case of *Karri Bapanna*³⁵, it held that the principle involved in §44 of the IEA is applicable also to cases where a judgment was obtained owing to the gross negligence of the guardian of a minor³⁶. Though the nature of suit where minor is involved is different from a representative suit, as a minor is incapable to bring legal action in contrast to all the represented parties who are legally capable to be joined as parties, nevertheless both the situations share some similarities. In as much as a minor does not have legal capability in person to bring suits in person but must be represented by guardian, in the same manner, since all the represented parties cannot be brought to court (specifically in cases where the suit covers large class populations), their right to a fair hearing and due process is tampered to the extent they are represented by a representative. It is the nature of the representative suit that relies on a 'constructive hearing' of all the absent parties. Any inadequacy or gross negligence on the part of the representative, binds the whole of the class. Therefore, it is argued that the gross negligence or inadequacy on part of the representative too should, apart from fraud or collusion, militate against the *res judicata* trap.

3. *The US jurisprudence on Inadequacy and Gross Negligence: Due Process Standard*

But, the most significant departure from the Indian approach lies in the constitutionalization of representation. The US Supreme Court in the landmark case of *Hansberry v. Lee* (1940)³⁷ transformed the *Adequacy Standard* from a procedural rule into a requirement of the *Due Process Clause of the Fourteenth Amendment*. The Court famously held that a judgment in a representative suit can only bind absent members if the representation was adequate in fact. If the representation was conflicted, or failed to vigorously protect the group's interests, the judgment is considered void as against those absent members.³⁸ If a person is trapped by a previous judgment, they can sue again and break the *res judicata* trap by proving that the first representative failed the *Hansberry test* of Due Process.

Whether gross negligence may amount to inadequate representation and would act as bar to *res judicata* was actively addressed in the prominent case of *Gonzales v. Cassidy*³⁹. Here, the representative negligently failed to appeal a judgment that granted him personal relief but

³⁵ *Karri Bapanna v Sunkari Yerramma*, 1923 SCC OnLine Mad 60: (1923) 18 LW 49 (Mad)

³⁶ *Ibid.*

³⁷ *Hansberry v. Lee*, 311 U.S. 32 (1940) [US].

³⁸ *Ibid.*

³⁹ *Gonzales v Cassidy*, 474 F 2d 67 (5th Cir 1973) [US].

denied it to other 150,000 class members.⁴⁰ To answer the question whether the representative adequately represented the class so that the judgment in the class suit would bind the absent members of the class, the US court laid down a two-pronged inquiry:

- 1) *Did the trial court in the first suit correctly determine that the representative would adequately represent the class? and*
- 2) *Does it appear, after the termination of the suit, that the class representative adequately protected the interest of the class, that is whether the representative, through qualified counsel, vigorously and tenaciously protected the interests of the class?*⁴¹

Since, here the representative was grossly negligent in failing to prosecute the appeal on the members of his class, the representation was rendered inadequate and the judgment was not bound by *res judicata*.⁴²

4. Lessons for Indian practice on Representative suits

Regarding the two procedural enquiries set out at the beginning of the section, the solution proposed are as follows. *First*, to determine which party, among the many present before the court in the same interest matter, should represent the community of interest, in other words, which suit should be the lead representative suit, the Indian courts should adopt the *Adequacy Standard* as laid down in US Federal Rules. This ensures that an inadequate or incompetent party, does not represent the interests of the absent class members in the suit. And *secondly*, when the representative suit is carried out in highly inadequate or grossly negligent manner, it should not operate as *res judicata* on the class members. The Indian courts should adopt the standard of '*Hansberry Test of Due Process*' and '*Gonzales two-pronged enquiry*', to ensure that the representative vigorously and tenaciously protects the class interest against any detriment.

V. Conclusion

The representative suits are a powerful procedural tool to bind innumerable absent members of a class to a single judgement. However, the Indian law currently offers no escape for

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

represented parties trapped by the gross negligence or inadequacy of a representative, unless actual fraud or collusion is shown to be proven. This creates a *res judicata* trap which becomes detrimental to the cause and interests of the represented class. The case of *Sri Krishna Virajman* further highlights the lack of objective standard for selecting lead representative in a suit. In stark contrast, the U.S. jurisprudence, allows for an adequacy standard to be fulfilled before a representative can represent the interest of the class. US cases like *Hansberry v. Lee* and *Gonzales v. Cassidy*, has transformed representation from a procedural requirement into a constitutional mandate of Due Process and has imposed fiduciary duties on the representative.

Ultimately, for the Indian representative suit to remain a legitimate instrument of justice in an increasingly complex and diverse society, the judiciary must move beyond the *Same Interest test* to an objective “*Adequacy Standard*” under Order 1 Rule 8. It should recognize gross negligence and inadequacy in such suits parallel to fraud and collusion, as exception to *res judicata* to ensure that the finality of the judgment does not come at the detriment to justice of the classes.