

Judgements of Court of Justice when relevant

Introduction

Let us first understand the actual meaning of judgement under the code of civil procedure, 1908. The [section 2\(9\)](#) of CPC defines it as a decision which is given by the judges in a court regarding the rights, duties and liabilities of an individual. The basic theory of law is whether the previous judgements or the following judgements are not relevant, as every case is decided by its own facts. The judgement depends upon the facts of the case of particular parties and not by the references to the judgement of other cases.

Judgment is of two types: –

1. Judgement in rem
2. Judgement in personam

1. Judgement in rem: – When a judgment is given on a particular subject matter, it will not only remain between the two parties but also be applicable to the entire world.
2. Judgement in personam: – When a judgment is given on a subject matter, it will remain between the parties. It means the judgment will be against an individual.

“Relevancy of judgement,” it means that every judgement is based upon the facts of each particular case. If we understand it in a simple way, it says that each and every case has its own importance. The judgement of each case is based upon the subject matter and it is not necessary that the judgment of one case is interrelated with another case.

A civil judgement is not relevant to a criminal trial though arising out of the same fact. A judgement in a civil case for defamation is not relevant to criminal prosecution. The previous judgment is not relevant to the subsequent case. More importance is given to the facts of the cases and on the basis of which judgement is given.

The Indian Evidence Act, 1872

The law may be divided into 2 parts i.e. substantive law and procedural laws. Substantive laws are those laws which define the right, duties, punishments and offences for the same, for e.g. I.P.C., and procedural laws are those by which the procedure of substantive law is regulated, for e.g. C.R.P.C. So the procedural law includes [the Evidence Act](#). The existence of proof or evidence is necessary in procedural law. The Indian Evidence Act was originally passed by the Imperial Legislative Council in 1872 in India, during the British Rule. It contains a set of rules and provides, inter alia, how a fact is to be proved.

It includes sections regarding the judgment of court of justice when relevant from Section 40 to Section 44 which talks for the same.

[Section 40](#)– The existing judgment will be relevant even in a second suit trial.

[Section 41](#)– The certain judgments in probate, matrimonial, admiralty, and insolvency jurisdiction are relevant.

[Section 42](#)– The effect of judgement, order, or decree is relevant, other than those which are given in section 41.

[Section 43](#)– Judgment, order or decree are irrelevant, other than those mentioned in section 40-42.

[Section 44](#)– If the previous judgment may proved fraud, collusion or incompetency of a court then such judgment does not have the effect of res judicata.

Section 40- Previous judgments relevant to bar a second suit or trail

Under the Indian Evidence Act, 1872, Section 40 defines that, the existence of any judgment, will be relevant even in a second trial. Here the rule of 'res judicata' applies. It simply means that if any judgement which prevents the court from giving attention to such a suit or petition then it will be a relevant fact.

The question arises: what is “res judicata”?

Many of you may have heard about this word. “Res” means “subject matter” and “judicate” means “already decided”. So, it says that the matter is already decided. It is defined under [Section 11](#) of Cr.P.C.

For Example: – ‘A’ and ‘B’ are two parties, ‘A’ sues ‘B’ for matters related to property. But the court dismissed the suit and then again ‘A’ filed a suit against ‘B’. So it was said that once the judgement was given by a court over a particular subject matter then that court does not have the jurisdiction and the formulae of res judicata applies.

Similarly, the Criminal Procedure Code bars a second trial of a person once tried or convicted. Thus, the judgment by which he was convicted will be relevant to every case or proceeding in which he is charged with the same offence.

Shrinivas Krishnarao Kango v. Narayan Devji Kango And Others (1954)

This case belongs to a member of a joint undivided family. Both Siddopant and Krishnarao were members of the Kulkarni family. Krishnarao died in 1897 and left behind a widow (Rukminibai) who was the sixth defendant. Siddopant died in 1899 leaving his son Gundo. Gundo died in 1901 leaving behind his widow (Lakshmibai) who was the fifth defendant. Lakshmibai adopted a son Devji, who died in 1935 leaving his three sons. The three sons and a widow (Akkubai) who was the fourth defendant. In 1944, Rukmanibai adopted the plaintiff and now that adopted son was the Petitioner in this case and the Respondent was Devji. So, the Plaintiff was claiming for the half share from the family property. But the Defendant denied the truth and validity of the plaintiff’s adoption. They further said that the only ancestral property belongs to the family of Watan’s Land. In this case, the court held that the adoption of the plaintiff was valid or true and also said that this question was no longer in dispute. The trial court held that the plaintiff was entitled to the share.

Section 41- Relevancy of certain judgment in probate, etc, jurisdiction

The [Indian Evidence Act, 1872](#) says that a final judgment, order, decree or ruling of a court exercising probate (relating to will), matrimonial (marriage, divorce), admiralty (war claims) or insolvency jurisdiction is relevant.

This section consist of two parts:

1. It deals with ***judgement in rem*** i.e. a kind of declaration about the status of a person and is effective to the entire world whether he was a party or not.
2. A ***judgement in personam*** is when a judgment is given to the parties (e.g. a tort or a contract action) which binds only the parties and is not relevant in any subsequent case.

Such judgment is conclusive proof. It refers to a presumption of a particular set of facts which cannot be overruled or changed by additional evidence or argument.

Syed Askari Hadi Ali Augustine v. State (Delhi Administration) & Anr (2009)

In this case, Shamim Amna Imam was a Testatrix (a person who made a will or gave a legacy). She was the owner of the properties in question. She executed a will in favour of the appellant i.e Syed Askari Hadi Ali on 3.5.1998 and after that, she died on 23.5.1998. Syed Askari Hadi Ali filed an application regarding the will. He also applies for a grant of mutation in respect of the property but the request for mutation could not be accepted due to certain reasons:-

1. The appellant could not produce the original copy of the will.
2. The property which was in question was under possession.
3. And the Title Suit which was filed by the Testatrix against the appellant was pending in the civil court.

So, after this many appeals were made and due to lack of proof which was essential in this case; finally the court said that it is not a fit case where we should exercise our discretionary power or jurisdiction under [Article 136](#) of the Indian Constitution have regard to the facts of the case and the circumstances regarding the same.

Kinds of jurisdiction: –

- ***Probate jurisdiction***

It exercises the power of probate, surrogate, or orphan's court. It includes the establishment of wills; settlement of a decedent's estate; supervision of guardianship of infants.

Goutam Shantilal Shah vs State of West Bengal on 9 May, 1996

In this case, a question arose, whether district delegates under [section 276](#) of Indian succession act 1925 can entertain an application for grant of probate of a will in respect of immovable property. But in the end, it was held that if any application is made for grant of probate of the will, such application shall be decided in accordance with the law.

- ***Matrimonial jurisdiction***

It exercises the power of marriage, divorce, et thoro, the nullity suit.

Santhini vs Vijaya Venketesh on 9 October, 2017

This case deals with [section 13](#) of Hindu marriage act, in this case, it was held that video conferencing is not allowed in matrimonial matters. In the circumstances, issue notice on the review petition.

- ***Admiralty jurisdiction***

It exercises the power of law over cases concerning ships or the sea and other navigable waters.

Gobind Ram vs Gian Chand on 27 September, 2000

This case deals with the matter in admiralty court. The respondent who was alleged to have committed breach of contract in London, the admiralty court's jurisdiction was invoked in England.

- ***Insolvency jurisdiction***

It exercises the power of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings.

Krishnaswami Iyer and ... vs T.V. Swaminatha Iyer on 26 August, 1924

This case deals whether vakils have a right of audience in the insolvency of the court at the Presidency Town of Madras. G. Krishnaswami Iyer was the appellant and T.V. Swaminatha Iyer was the respondent. After all the discussion it was decided that vakils had no right of audience in the insolvency court.

Section 42- Relevancy and effect of judgments, orders, decrees, other than those mentioned in Section 41 of the Indian Evidence Act

The effect of judgment or order will be relevant, except those which are mentioned in [section 42.](#)

- Judgements are relevant if they are related to matters of public nature.
- But such judgment, order or proclamation is not conclusive proof of which they state.

Illustration: – X sues Y for the murder of his brother i.e. Z. Y alleges the existence of a public right of a licensed gun which he used for his protection against Z. The existence of an order in favour of the defendant. Similarly in a suit by B against A for the murder of C in which A alleged the existence of the same right of way, is relevant but it is not conclusive proof that the right way of existence.

[Vishnu Dutt Sharma v. Daya Sapra on 5 May, 2009](#)

In this case, the Respondent who was Daya Sapra had borrowed a sum of rupees 1.5 lakhs from the Appellant Vishnu Dutt Sharma on 10-August,1999. After reminder by appellant to respondent, the respondent issued a cheque on 20-October,1999, but the cheque received by the appellant with remark of insufficient funds. Then he filed a petition against the respondent. Earlier it was said that it was the matter of 'Res Judicata' but the final judgement was given that it was not the matter of 'Res Judicata'. So the appeal is allowed however the facts, issues and circumstances of this case, there shall be no order as to costs.

Section 43- Judgment, order etc, other than those mentioned in Section 40 to 42, when relevant

Judgment, order or decree are irrelevant other than those mentioned in section 40, 41 and 42. In this, the previous judgments are not relevant with concern with the subsequent proceeding.

Let us understand with an illustration. 'X' prosecutes 'Y' for stealing his horse from him. 'Y' is convicted. Afterwards 'X' sues to 'Z' for the horse which 'Y' had

sold to 'Z' before his conviction. As between 'X' and 'Z', the judgment which was against 'Y' is irrelevant.

In the case of [The Duchess of Kingston's Case](#), it was held that the Dowager Duchess of Kingston, Countess of Bristol, was tried and found guilty of the charge of bigamy by her peers, the members of the House of Lords.

Admissibility of judgments in civil and criminal matters

Admissibility of judgments means that the quality of being acceptable or valid, especially as evidence in a court of law. So here is some admissibility of judgment in civil and criminal matters: –

- The principle of 'Res Judicata' may apply between the parties in civil suits.
- If the proceedings of civil and criminal cases are for the same cause or reason, then the judgment of the civil court would be relevant if the conditions of any sections regarding 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in section 41.
- In a criminal case, [section 300 of C.r.P.C](#), it is said that once a person is convicted, he may not be examined again for the same offence if the conditions which are mentioned there are satisfied.

Emperor vs Bhagwandas Tulsidas on 20 August, 1945

In this case, it was held that the accused murdered Dharamsey and Mr. Haji, and he says that the matter will come under Section 42 of the Indian Evidence Act under matters related to public policy. But it was held that the matter related to such an unnatural death will not come under public concern. Hence, the examination of certain facts is not relevant under any provision related to the Indian Evidence Act and therefore unacceptable in evidence.

Section 44- Fraud or collusion in obtaining judgment, or incompetency of court, may be proved

[Section 44 of Indian Evidence Act](#) says that if the previous judgment is proved fraud, collusion (secret or illegal cooperation) or incompetency of court then such judgement does not have the effect of res judicata.

- There are at least 2 parties to a suit or proceeding.
- If any party may show a judgment, order, or decree which is relevant under section 40, 41, or 42.
- The act only provides that the value of a judgment may be ineffective if these three things are present in that case that are: –
 1. Incompetency of the court
 2. If there is fraud
 3. If there is collusion

Asharfi Lal vs Smt. Koili (Dead) By L.Rs. (1995)

This case is related to the land reform dispute and Zamindari abolition as in this case, Raja Ram was the brother of Smt. Koili and husband of Smt. Nanki. And here the Asharfi Lal who was an appellant and he said that he was the only heir of Raja Ram and said for the possession of agricultural land of Raja Ram but the Smt. Koili denied that the Asharfi lal was the son of Raja Ram. Earlier the judgment was in the favour of Smt. lal but afterwards the evidence of record which were produced in the consolidation proceedings the Deputy Director has found that Ashrafi lal was the son of Raja Ram and the only heir.

Conclusion

According to me, judgment should totally be on the basis of the facts and the issues raised in the court. The court is also required to determine what principles of law should control the case. But there is also a criticism regarding this that there is always a scope for improvement. The judges said that the system which is developed and applicable in one jurisdiction is not necessary to be applicable in the jurisdiction of other countries. After all, no system is fool-proof. Once it is said by Justice Sikri, that we all learn from our experiences and mistakes.

