

# The Interplay Between Res Judicata and Public Interest Litigation: Balancing Finality with Access to Justice

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## Abstract

The present research paper focuses on the relationship between the doctrine of res judicata under Section 11 of the Code of Civil Procedure, 1908, and Public Interest Litigation (PIL), which is quite complex in India. Though res judicata fulfills the main role of guaranteeing finality in the process of judicial hearings and multiple litigation is avoided, PIL is a groundbreaking initiative of increasing access to justice in the marginalized communities. This paper evaluates the manner in which these two principles, which appear contradictory to each other, are co-existing in the legal system in India and how the judges have tried to fix the dilemma of finality and social justice. The paper will also contend by looking at landmark cases and analysing doctrines that res judicata in PILs, though a pillar of procedural law, still has significant exceptions made by Indian courts, such that the concerns of the people are not unnecessarily sacrificed at the altar of procedural formalities.

## 1. Introduction

The Indian judicial system is in the middle of two conflicting but complementary values: the necessity to provide finality in judicial processing, and the constitutional value to provide access to justice to all citizens. The former principle is reflected by the doctrine of res judicata, which is contained in Section 11 of the Code of Civil Procedure, 1908 (CPC), and the doctrine of res judicata precludes the re-trial of issues which had been adequately decided by competent courts<sup>1</sup>. On the other hand, Public Interest Litigation (PIL) is a revolution in Indian law and has democratized the courtroom system, making it possible to enforce the rights of people who have no other way to approach the judiciary with their grievances<sup>2</sup>.

The clash between the two philosophies poses some basic questions concerning the delivery of justice in India. Will inflexible application of principles of res judicata have an obstructive effect on the transformative potential of PIL? Does the procedural safeguards issue give way to the issue of substantive justice in the issues of the national interest? The aim of this paper is therefore to find answers to these questions by discussing the doctrinal basis of the two and how they have developed in Indian jurisprudence, as well as how courts resolve the conflicts between them.

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<sup>1</sup> Code of Civil Procedure, 1908, § 11.

<sup>2</sup> Dr. Saroj Bohra, "Public Interest Litigation: Access to Justice" (discussing PIL's role in democratizing justice).

Section 11 of the CPC has the Latin maxim of “*interest reipublicae ut sit fines litium*” - it is in the interest of the people that an end be put to litigations.<sup>3</sup> The principle is used to accomplish two purposes namely to shield the parties against harassment as a result of recurring litigation and to conserve judicial resources by avoiding re-adjudication of cases that have already been settled. Nevertheless, strict construction of this doctrine may have the potential of preventing bona fide PIL petitions aimed at remedy to ongoing breach of fundamental rights or the changing public interest concern

## **2. The Doctrine of Res Judicata: Conceptual Framework**

### **2.1 Understanding Section 11 of CPC**

In section 11 of the CPC, it is stated that no court shall try any suit, or issue, in which the matter in issue is direct and substantial, in any former suit between the same parties, or between parties under whom they or any of them claim, and litigate under the same name, has been heard and decided by such court.<sup>4</sup>

The principle of “*nemo debet bis vexari pro una et eadem causa*” - “no person should be vexed twice for the same cause” is the philosophical basis of the doctrine.<sup>5</sup> As put forward by the Supreme Court in *Satyadhan Ghosal v. Deorjin Debi*, when a prior suit has been adjudged in a competent court as regards to fact, law or both, neither of the parties can subsequently bring a new suit on the same subject.<sup>6</sup>

### **2.2 Essential Conditions for Res Judicata**

The use of res judicata has a number of conditions that must be met, each of which acts as a constraint against the misuse of res judicata:

To begin with, the case should be directly and substantially in question in either of the proceedings. The factual circumstances as well as the applicable legal principles are included in matter in issue.<sup>7</sup> The fact that the matter must be in issue directly implies that its existence is not conditional with the decision of the court whereas the term substantial implies that the issue must bear material to the decision of the court.<sup>8</sup>

Second, those parties to both proceedings should be identical. This test adheres to the fact that judicial decisions only bind individuals who had a chance to challenge the issue in court,<sup>9</sup> and does not limit the case to cause of action, which means that a person is not bound by the decision made in the case where he or she did not have any say.<sup>10</sup>

<sup>3</sup> Aryan Birewar, “Critical Analysis of Section 11 of CPC, 1908 – Res Judicata,” 4 *International Journal of Law Management & Humanities* 1337, 1338 (2021).

<sup>4</sup> *Code of Civil Procedure*, 1908, § 11.

<sup>5</sup> *Narayan Prabhu Venkateswara v. Narayana Prabhu Krishna*, (1977) 2 SCC 181.

<sup>6</sup> *Satyadhan Ghosal v. Deorjin Debi*, AIR 1960 SC 941.

<sup>7</sup> *Mathura Prasad v. Dossibai N.B. Jeejeebhoy*, (1970) 1 SCC 613.

<sup>8</sup> *Amalgamated Coalfields Ltd. v. Janapada Sabha*, AIR 1964 SC 1013; *Pandurang Ramchandra v. Shantibai Ramchandra*, (1989) Supp (2) SCC 627.

<sup>9</sup> *Birewar*, *supra* note 3, at 1339

<sup>10</sup> *Ram Govinda v. Bhaktabala*, AIR 1971 SC 664.

Third, the litigating parties should have sued under the same title or capacity. As understood in *Mahadevappa Somappa v. Dharamappa Sanna*, the capacity whereby an individual sues should be the same in both proceedings to have res judicata.<sup>11</sup>

Fourth, the former court should have been qualified to hear both the prior and the later suits. Explanation II makes it clear that this bar is based on the hearing and decision on the same issues on merits.<sup>12</sup> Res judicata is not available to dismissals grounded on jurisdiction, maintainability or other process flaws.<sup>13</sup>

Fifth, it has to have been heard and ultimately determined in the prior proceeding. This is necessary to make sure that only judicative conclusions that have been taken into account, rather than interlocutory or provisional orders, are granted the force of res judicata.<sup>14</sup>

### **2.3 Constructive Res Judicata**

In the explanation IV to section 11, the doctrine is expanded by the introduction of the term constructive res judicata, where a case which is not actually decided is placed under the doctrine, as a case which, though not decided, would and should have been attacked or defended in the prior suit.<sup>15</sup> This rule does not allow parties to hold back grounds in previous proceedings only to invoke them later and so playing a role in ensuring completeness in litigation and avoiding a piecemeal adjudication.

The Supreme Court in *Devilal Modi v. Sales Tax Officer* pointed out that, unless this extension was done, parties could go to court with successive petitions by showing new points, which was against the consideration of the public policy and the doctrine of finality of judgments.<sup>16</sup> Even then the application of constructive res judicata is that the party must have known the ground actually and that bringing it up would have influenced the decree in the former suit<sup>17</sup>.

### **2.4 Rationale and Public Policy Foundations**

The Public policy and necessity are the two main pillars of the doctrine of res judicata.<sup>18</sup> The reason why it should not be re-litigated indefinitely is based on the unlimited re-litigation, which would make the courts centres of vindictive litigation, harassment of the parties and waste of judicial time<sup>19</sup>. This is the reason based on the necessity rationale that limited re-litigation is necessary in enforcement of social order and commercial dealings

## **3. Public Interest Litigation: A Jurisprudential Revolution**

### **3.1 Genesis and Evolution of PIL in India.**

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<sup>11</sup> *Mahadevappa Somappa v. Dharamappa Sanna*, AIR 1942 Bom 322.

<sup>12</sup> *Code of Civil Procedure*, 1908, § 11, Explanation II.

<sup>13</sup> *Raj Lakshmi v. Banamali Sen*, AIR 1953 SC 33.

<sup>14</sup> *Birewar*, *supra* note 3, at 1339.

<sup>15</sup> *Code of Civil Procedure*, 1908, § 11, Explanation IV.

<sup>16</sup> *Devilal Modi v. Sales Tax Officer*, AIR 1965 SC 1150.

<sup>17</sup> *Govt. of Province of Bombay v. Pestonji Ardeshir Wadia*, AIR 1949 PC 143.

<sup>18</sup> *Duchess of Kingston Case*, (1776) 2 S.m. L.C. (6th Ed.) 679.

<sup>19</sup> *Narayan Prabhu Venkateswara*, *supra* note 5.

India Public Interest Litigation Public interest litigation in India developed in the 1980s as a revolutionary reaction to the weaknesses of conventional adversarial litigation in dealing with the complaints of underprivileged groups.<sup>20</sup> American scholar Abram Chayes was the first to emphasize the concept when he named the key characteristics of PIL liberalized joinder of parties, focus on equitable relief, prospective remedies, and extended fact-finding procedures.<sup>21</sup> Before the PIL revolution, litigation in India was clung to the conventional paradigm, with a rigid locus standi and individualistic structure that were inappropriate to collective actions on behalf of the underprivileged.<sup>22</sup> The broad gap between constitutional rights and their practical application in the case of illiterate and impoverished citizens required the radical rethinking of the measure of access to justice.<sup>23</sup>

### 3.2 Judicial Activism and the Birth of PIL.

This change was driven by progressive judges especially Justice P. N Bhagwati and Justice V.R Krishna Iyer who realized that the conventional system of justice delivery was insufficient to entertain systematic violations against vulnerable populations.<sup>24</sup> The Supreme Court democratized access to justice, and gave the power of redressing the rights of people who could not approach courts directly, to so-called public spirited citizens, through liberalization of locus standi requirements and by introducing novel forms of procedure mechanism.<sup>25</sup>

The landmark of *Hussainara Khatoon v. The state of Bihar* was a turning point in the history because the Court had granted a petition of an advocate on the basis of newspaper articles that revealed the situation of under-trial inmates<sup>26</sup>. This made it a principle that social action groups and the concerned citizen could apply the judicial jurisdiction in support of the disadvantaged and this fundamentally changed the concept of locus standi in the Indian law.

### 3.3 Epistolary Jurisdiction and Procedural Innovations.

The revolutionary idea of so-called epistolary jurisdiction, whereby informal communications such as letters by prisoners or by citizens who were concerned could be handled as writ petitions, was introduced by PIL.<sup>27</sup> In *Sunil Batra v. Delhi Administration*, the Supreme Court which heard a case involving Delhi Administration said that "technicalities and legal niceties are no obstacle to the court considering even the informal communication in case of the basic facts indicating the rights violation."<sup>28</sup>

This latitude was also applied to the field of evidence, when commissions were appointed by the courts to gather information when petitioners would have no means to provide detailed evidence.<sup>29</sup> These inventions changed the judicial process to be no longer a contest-based adversarial one but a more inquisitorial style of the judicial process in matters of public interest.

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<sup>20</sup> Bohra, *supra* note 2.

<sup>21</sup> Abram Chayes, "The Role of the Judge in Public Law Litigation," 89 *Harvard Law Review* 1281 (1976).

<sup>22</sup> Bohra, *supra* note 2 (discussing litigation's elementary form in 1960s-70s India).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *S.P. Gupta v. Union of India*, (1981) *Supp. SCC* 87.

<sup>26</sup> *Hussainara Khatoon (I) v. State of Bihar*, (1980) 1 *SCC* 81.

<sup>27</sup> Bohra, *supra* note 2.

<sup>28</sup> *Sunil Batra v. Delhi Administration*, (1978) 4 *SCC* 494.

<sup>29</sup> Bohra, *supra* note 2 (discussing appointment of commissions in PIL cases).

### 3.4 Expanding the Scope: Landmark PIL Decisions

PIL jurisprudence grew very fast to cover different fields of interest to the common good. *Ratlam v. Municipal Council*. The Court, as noted by Vardichand, acknowledged the status of the group of citizens taking action over municipal inaction in their view, arguing that the standpoint of the traditional individualism of locus standi should be replaced by the emphasis of the community orientation of the public interest litigation.<sup>30</sup>

Protecting the environment became a pressing topic of PIL due to the relentless work of such activists as M.C. Mehta whose petitions led to a landmark ruling regarding industrial pollution, conservation of the Ganges river, vehicular emissions in Delhi, and the preservation of the Taj Mahal.<sup>31</sup> The use of PIL by the judiciary to ensure that the people transport in Delhi switched to Compressed Natural Gas (CNG) although controversial at first, proved to have the potential of bringing radical social change.<sup>32</sup>

In *Vishaka v. State of Rajasthan* used the international conventions to construct the guidelines to combat sexual harassment at workplaces, which fills the gap in legislation and forms a potential of PIL in norm articulation in the absence of statutory provisions.<sup>33</sup> Likewise, in *People's Union for Civil Liberties v. Union of India*, kept an eye on the execution of the mid-day meal scheme, and then the government made assurances, which were converted into the concrete benefits of poor children.<sup>34</sup>

## 4. The Intersection: When Res Judicata Meets PIL

### 4.1 Theoretical Tensions

There are inherent tensions between the relationship between res judicata and PIL that are a result of the differences in their philosophical basis. Res judicata focuses on finality, efficiency, and immunity against harassment by litigation. PIL on the other hand focuses on accessibility, substantive justice and vindication of collective rights, occasionally to the disregard of formality<sup>35</sup>.

Such tensions appear in the following situations:

To begin with, PIL is often used where the violations continue or the circumstances change with time in that the factual matrix also varies. The absolute enforcing of res judicata would preclude new petitions in cases where the situation has changed substantially, and the persistent violations would remain unaddressed.

Second, the liberalized locus standi under the PIL cases imply that other petitioners can initiate a new petition on the same issue of interest to the populace. Is it permissible that previous cases should be binding on future petitioners who were not even present at the time of the original case?

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<sup>30</sup> *Municipal Council, Ratlam v. Vardichand*, (1980) 4 SCC 162.

<sup>31</sup> *M.C. Mehta v. Union of India*, (1987) 1 SCC 395; *M.C. Mehta v. Union of India*, (1988) 1 SCC 471; *M.C. Mehta v. Union of India*, (1996) 4 SCC 750.

<sup>32</sup> *M.C. Mehta v. Union of India*, (1998) 8 SCC 648.

<sup>33</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>34</sup> *People's Union for Civil Liberties v. Union of India*, (2007) 1 SCC 728.

<sup>35</sup> Kevin M. Clermont, "Res Judicata as Requisite for Justice," 68 *Rutgers University Law Review* (2016).

Third, due to its future-oriented form, which aims to avoid future damage and guarantee policy execution, PIL might be incompatible with the *res judicata* that tries to bring closure to the old conflicts.

## **4.2 Judicial Approach to Reconciliation**

The Indian courts have taken a subtle forward to resolve these tensions by appreciating that either of the two principles cannot be held to absolute use to discriminate against the legitimate objectives of the other.

### **4.2.1 Modified Application in PIL Matters**

The Supreme Court has concluded that though *res judicata* applies to PIL procedure, it has to be applied with a consideration of the characteristic nature of PIL. In *S.P. Gupta v. The Court Union of India*, the Court identified that the liberalization of locus standi must not lead to the rejection of all procedural protections, but on the other hand should not lead technical rules to overcome substantial justice in the issues of public interest.<sup>36</sup>

It has always been a ruling of the courts that in those instances where the facts of the case vary materially new PIL petitions may be submitted regardless of the previous decisions. In *Krishna Kumar v. Radha Rai* Even the Delhi High Court could not rule out fresh petitions on similar issues by Vimala Sehgal who stated that the changed circumstances warrant new petitions.<sup>37</sup>

### **4.2.2 The "Continuing Wrong" Exception**

PIL cases usually imply the further violations of rights or the further threat to the interest of people. The courts have acknowledged that *res judicata* is not to prevent petitions to be filed against ongoing wrongs because every day of the breach is a new cause of action. This principle is observed in the cases of environmental pollution, where the level of pollution and the emergence of new contamination sources are the reasons why the interventions must be introduced and implemented successively, even in previously ordered cases.<sup>38</sup>

### **4.2.3 Different Petitioners and Public Interest**

One of the main questions is whether *res judicata* has the effect of binding future PIL petitioners whose parties to previous proceedings were not. Since PIL involves a somewhat different scenario, i.e. petitioners represent the interests of the people, and not the protection of individual rights, courts have decided that this representative nature of the doctrine must be taken into consideration.

Section 11, in the explanation VI, which deals with representative suits, gives guidance. In the case of lawsuits that are brought on a bona fide basis on behalf of the collective interests, the ruling is binding to all the parties represented.<sup>39</sup> But this principle has been reserved too widely in PIL cases by courts who have appreciated that there are other points of view on the question of the public interest which can receive a judicial hearing.

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<sup>36</sup> *S.P. Gupta*, *supra* note 25.

<sup>37</sup> *Krishna Kumar & Radha Rai v. Vimala Sehgal*, ILR 1976 Delhi 238.

<sup>38</sup> See *Mehta cases*, *supra* notes 31-32

<sup>39</sup> *Code of Civil Procedure*, 1908, § 11, Explanation VI; *Ahmad Adam Sait v. M.E. Makhri*, AIR 1964 SC 107.



### **4.3 Exceptions to Res Judicata in PIL Context**

#### **4.3.1 Questions of Law and Constitutional Interpretation**

There are a few exceptions to res judicata that are of specific concern in PIL affairs:

Inquiries about the Law and Interpretation of the Constitution. The res judicata is not usually attracted to pure questions of law, especially those involving the interpretation of constitutions. This exemption is essential to PIL which frequently deals with interpretation of constitutional rights. The courts have reasoned that wrong legal determinations must not in any way be taken as absolute dismissers of right legal interpretations particularly when the law is of constitutional relevance.<sup>40</sup>

In *Avtar Singh v. Jagjit Singh*, the Supreme Court also ruled that res judicata (judged through ignorance of the law to be applied), should not be applicable to future litigation working, the judgement per incuriam because it would prioritize the procedural rules over the substantive law.<sup>41</sup>

#### **4.3.2 Jurisdictional Questions**

The doctrine of res judicata is not applicable to the issue of jurisdiction because courts cannot grant jurisdiction to itself by consent/acquiescence. This exception is of great importance to PIL where the issue of jurisdiction frequently mingles with substantive issues of public interest.<sup>42</sup>

#### **4.3.3 Issues concerning Fundamental Rights.**

Although it is not an exception, courts have been hesitant to use res judicata strictly where rights fundamental violations are involved. The Supreme Court has noted that the doctrine is not to injure litigating parties or leave the violation of fundamental rights unremedied.<sup>43</sup>

### **4.4 The Abuse Problem: Striking a Balance between Accessibility and Finality.**

The open regime of PIL has sometimes been abused with frivolous petitions being made on collateral or publicity grounds.<sup>44</sup> This has made courts stress that extraordinary nature of PIL should not be used to substitute ordinary remedies besides making it facilitative to irresponsible litigation.

The Supreme Court has been progressively applying res judicata to discourage abuse of PIL and maintain the transformational promise of the mechanism to real cases. The courts have become more skeptical in examining PIL petitions with the petitioner expected to show bona fide motives and actual concerns regarding the interest of the citizens at large.<sup>45</sup>

## **5. Comparative Perspectives and Issue Estoppel**

### **5.1 Issue Estoppel and Its Relationship with Res Judicata**

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<sup>40</sup> *Birewar*, *supra* note 3, at 1338-39.

<sup>41</sup> *Avtar Singh v. Jagjit Singh*, (1979) 4 SCC 83.

<sup>42</sup> *Birewar*, *supra* note 3, at 1339.

<sup>43</sup> *A.R. Antulay v. R.S. Nayak*, AIR 1988 SC 1531.

<sup>44</sup> *Bohra*, *supra* note 2 (discussing PIL abuse concerns).

<sup>45</sup> *Id.*

The issue estoppel is like the res judicata and does not allow litigants to re-determine certain issues, which have already been decided in the preceding litigation. Whilst res judicata bars causes of action, issue estoppel does not and, instead, binds parties to judgements over matters of fact or law.<sup>46</sup>

The more targeted application of issue estoppel can be a more precise tool in PIL, where res judicata should be applied in a more blanket manner. Issue estoppel does not permit the re-litigation of core factual determinations but does permit the re-litigation of issue that change over time or present particular legal arguments.

## 5.2 Res Judicata in Criminal Proceedings

The principles of res judicata in criminal law in the code of criminal procedure, 1973, are contained in section 300(1) of the code in terms of autrefois acquit (previously acquitted)<sup>47</sup> and autrefois convict (previously convicted) doctrines. This eliminates the possibility of being prosecuted on the same offense on several occasions and this safeguards people against being prosecuted twice. The comparison between criminal and civil res judicata clarifies the special position of PIL. Similar to criminal practices, where the interests of society supersede those of individuals, PIL includes general rights and communal wellbeing. This analogy implies that PIL ought to enjoy this adaptable application of res judicata, in a similar manner that the acutely circumscribed principles of double jeopardy are.

## 5.3 Estoppel Distinguished from Res Judicata

Both res judicata and estoppel encourage consistency and finality, but they are in a major way different. There is also the estoppel which is codified under Section 115 of the Indian Evidence Act, 1872 and which does not allow denial of statements or admissions made during the proceedings by the parties.<sup>48</sup> It is an equitable relief that relies on the behaviour of parties whereas the res judicata is founded on judicial decisions.

Most importantly, estoppel is only binding to the party making the representation, but res judicata is binding on all parties to the litigation<sup>49</sup>. This difference is important in PILs because the interest of the public overrides personal behaviour and confessions.

## 6. Contemporary Challenges and Future Directions

### 6.1 The Need for Legislative Clarity

The interplay between res judicata and PIL has been determined on a case-by-case basis even though there is a broad jurisprudence, which provides ambiguity. An intervention by legislature to shed light on the doctrine in the application of PIL issues would offer much-needed clarity without restricting the judiciary in unusual cases.<sup>50</sup>

<sup>46</sup> C.K. Takwani, *Civil Procedure with Limitation Act 1963*, 8 (2018).

<sup>47</sup> *Code of Criminal Procedure, 1973*, § 300(1); *Bhanu Kumar Jain v. Archana Kumar*, (2005) 1 SCC 787.

<sup>48</sup> *Indian Evidence Act, 1872*, § 115.

<sup>49</sup> *Birewar*, *supra* note 3, at 1341.

<sup>50</sup> *Law Commission of India, 54th Report* (1973).



Procedural reforms were periodically revised by the Law Commission of India, though the particular procedural needs of PIL still need to be focused on. A moderate model would acknowledge the transformational power of PIL but avoid any abuse by suitable protection.

## **6.2 Institutional Mechanisms for PIL Management**

Instead of using *res judicata* as the main tool of deterring PIL abuse, the courts may create institutional means of screening and controlling PIL petitions. PIL benches specializing in the area of adjudication of the public interest might guarantee the regularity of the application of the principles but leave the flexibility to real cases. High Courts have also started having PIL cells, which preliminarily conduct the scrutiny which blocks any frivolous petition and clears the official cases. A further development of these mechanisms would help lessen the tension between accessibility and finality by implementing a solution to the abuse at the threshold level and not via a *res judicata* application.

## **6.3 Monitoring and Continuing Mandamus**

PIL usually mandates a period of judicial oversight by monitoring devices and continuation of mandamus orders. This prospective aspect is what makes PIL distinctive in terms of litigation that was conducted in the past where the ultimate verdicts put an end to the proceedings. Courts need to come up with structures on when fresh petitions is monitoring of prior orders and when it amounts to re-litigation barred by *res judicata*.

The stance of the Supreme Court in the environmental cases, in which it has retained its jurisdiction over the years to make sure that there is compliance, illustrates that there is a necessity of flexible doctrines that suit the specific needs of PIL without discarding the principle of finality<sup>51</sup>.

## **Conclusion**

The connection between *res judicata* and Public Interest Litigation has been filled with a major tension in Indian jurisprudence: the necessity of finality and efficiency in judicial processes and the constitutional requirement of the right to access to justice and upholding interests of the people. As this paper has already shown, though theoretically divergent, these principles can coexist together in a judicial application that is sensitive to both purposes. *Res judicata* plays important roles in making the judicial process efficient, avoiding harassment of the parties involved, and providing some degree of certainty in interactions between parties. Its grounds on its policy towards the public are not flawed, and its influence on the prevention of the abuse of the judicial process cannot be rejected.

Nevertheless, strict implementation of the doctrine in PIL issues would compromise the transformative nature of such mechanism, which would leave the ongoing violations unchecked and deprive vulnerable groups of justice. This tension has been resolved in a number of ways by Indian courts. To begin with, they have identified exceptions to *res judicata* in changing circumstances, ongoing violations, and constitutional meaning matters. Second, they have interpreted the provisions of the doctrine in a more flexible way when dealing with PIL cases, which is to take into consideration the representative character of PIL petitioners and the common good involved. Third, they have questioned more rigidly PIL petitions

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<sup>51</sup> See *Mehta cases*, *supra* notes 31-32.

on threshold stage, containing abuse by preliminary scrutiny instead of automatic enforcement of res judicata.

In the future, there are a number of imperatives. Such legislative certainty on the application of res judicata to PIL would create less uncertainty but maintain the required judicial flexibility. PIL management mechanisms based in the institution might filter frivolous petitions without compromising on access to justice. Primarily, what courts need to proceed with is the creation of complex frameworks that have a sense of both finality and access wherein neither principle should apply its absoluteness to the detriment of the other in favor of its legitimate purposes. The principle of res judicata will to be a staple of procedural law, without which judicial efficiency and defence against the evils of vexatious litigation would be impossible. At the same time, PIL will remain an essential tool of social change, as marginalized groups of people will be able to claim their rights and make the state responsible to their constitutional commitments.

The dilemma of Indian jurisprudence does not exist in the selection between these concepts but in the development of mechanisms that would promote and not hinder both procedural rights and safeguards and substantive justice that is promised by PIL. Finally, the interaction between res judicata and the PIL is a manifestation of more general inquiries concerning the role of law in society. Is law simply the means of relating conflicts, or does it have transformative purposes in realizing constitutional ambitions of social and economic justice? The Indian experience implies that law should be both: efficient and final, to be respected and offer certainty, but it should be flexible and reachable, in order to respond to systemic injustices, as well as, to changes in public interest issues. To reach such a balance, the work of the judiciary must be characterized by constant innovative thinking, attention of legislation, and the involvement of scholars in the practical and theoretical issues of the intersection of these guiding principles.