

# THE DOCTRINE OF APPROBATE AND REPROBATE: A BIRD'S EYE VIEW OF ITS PERTINENCE IN TAXATION LAW

Submitted by

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## ABSTRACT:

The adage, "You can't burn the candle at both ends" aptly describes the doctrine of approbate and reprobate. The doctrine of election emphasizes that parties to a lawsuit cannot accept and reject the same transaction simultaneously, nor can anyone claim the benefit of a transaction at one time by stating that they are entitled to it and that it is valid, only to later declare it void in order to obtain another advantage. It is predicated on the idea that the person who gains from an instrument must also bear its costs. When the grantor expressly desires that the grantee not enjoy both rights, the grantee must choose between two rights that clash or are alternative.

**Purpose:** The primary aim of the research is to analyse the intricacies involved in the application of this doctrine. The usage of the doctrine has also been analysed by linking it with Transfer of Property Act, 1882 and Indian Trademark Law in order to best understand the application of this doctrine. **Methodology:** The Study employs a secondary data research methodology, relying extensively on legal texts, case law, judicial pronouncements and scholarly articles. **Findings:** Upon examining multiple Indian rulings concerning the doctrine of approbate and reprobate, we can determine that our legal precedents strongly endorse this doctrine.

**KEYWORDS** - Approbate, Reprobate, Doctrine of Election, *Allegans Contraria Non-Est Audiendus*

## I.INTRODUCTION:

The doctrine of approbate and reprobate<sup>1</sup> is based on the maxim 'quod approbo non reprobo' which translates to 'that which I approve, I cannot disapprove' or it can also be inferred as 'one cannot eat a cake and have it too'. It is a doctrine based on equity and is sharply related to the doctrine of election. The word "approbation" denotes an official acknowledgment or acceptance of any document or instrument, while the word "reprobation" denotes a firm rejection of the same. The foundation of the notion of election is the idea that an individual cannot simultaneously approbate and reprobate under the law. The doctrine of election points out that parties under litigation cannot accept and reject the same transaction at the same time, and that no one may claim the benefit of a transaction at one point by declaring it to be valid and so entitled, and later declare it void in order to gain another advantage. It is based on the premise that the individual who benefits from an instrument must also pay its burden. Election is the obligation to choose between two rights that conflict or are alternative when the grantor specifically wants the grantee to not have both. The doctrine of approbate and reprobate is applied in various Indian laws like Property law, Taxation law etc., For instance, in an income tax lawsuit, the assessing

<sup>1</sup> <https://www.studocu.com/in/document/guru-gobind-singh-indraprastha-university/property-law/approbate-and-reprobate/8194369>

officer cannot tax the assessee's income under the category "income from other sources" if the assessee's income was determined not to be taxable under the head "business income." This doctrine's main goal is to make taxpayers answerable for the stances they adopt in their tax returns. It keeps taxpayers from profiting from unauthorized deductions by rejecting their eligibility as a result. It guarantees uniformity in tax treatment and preserves the idea of justice. The integrity of the tax system is ensured by consistency in tax position. It stops taxpayers from shifting between options that best serve their interests, preventing them from adopting stances that are inconsistent with one another. Treating taxpayers fairly and equally is another outcome of this doctrine. In general, this system maintains tax compliance. This doctrine further relates to the maxim 'allegans contraria non est audiendus' which means contradictory claims shouldn't be taken into consideration. In the case of *Vallapareddy Sumitra Reddy and others vs. Kasireddy Laxminarayana Reddy and Ors.*, it was held that principle of Allegans Contraria Non-Est Audiendus states that *a party to a proceedings shall not be permitted to approbate and reprobate.* This paper focuses on the historical overview of doctrine of approbate and reprobate, application of the doctrine in the Indian tax Law system, how the doctrine is different from the doctrine of res judicata and a comparative study has also been done in this regard.

## II.HISTORICAL BACKGROUND:

### Scot Law<sup>2</sup>:

The doctrine of approbate and reprobate traces its origin to Scottish Law. This doctrine holds that a person cannot simultaneously advocate his rights conferred by a instrument and reject the rest of the same instrument. The doctrine's practical application has historically been restricted to the domains of succession, trusts, and wills. The doctrine time and again emerged in relation to legal rights, wherein a will beneficiary was required to choose between exercising their legal rights and receiving a legacy. In the case of *Birnie v. Bariff County Council* [1954] S.L.T. (Sh Ct) 90, where the Town and Country Planning (Scotland) Act 1947 was at issue the Judge observed that the doctrine of approbate and reprobate "is not among the canons of statutory construction," and the arguments of the respondent was rejected on this basis. However, in the case of *McKinnon, Petitioner* [2003] S.C.L.R. 283, Lord Johnston observed that the petitioner's conduct was similar to the idea of approbate and reprobate, which the Scottish courts have never accepted as a suitable stance for a litigant to take (ibid. at 289). One could argue that the concepts of approbate and reprobate are similar to the personal bar doctrine found in Scots law. On the other hand, the requirements for personal bars are more stringent. It necessitates both an inconsistency and reliance on the part of another party. Therefore, it necessitates that one must have persuaded another person to depend on oneself by acting in a way that gave the impression that a specific course of action was being chosen.

### English Law:

The principle of approbate and reprobate is frequently invoked by English courts, albeit typically through the lens of the English doctrine of "election." According to Halsbury (Halsbury's Laws of England, vol. 16(2), 4th ed. reissue, 2003, para. 962), there are two different meanings associated with the term "election" and it can be categorized as "the equitable doctrine of election" and primarily "the principle of common law which calls upon to elect between alternative divergent choices." The case of *Codrington v Codrington* [1875] LR 7 HL 854 at 861-862 incorporates the doctrine of approbate and reprobate. The case addresses the circumstance in which a deed or will purports to make a general disposition of property for the benefit of a person named in it. In order for that person to accept a benefit under the instrument, they must simultaneously affirm all of its provisions and renounce any rights that conflict with them. As a result, unlike in Scotland, where it is a legal doctrine unto itself, the principle of approbate and reprobate appears in England as an expression of the legal doctrine of election and is viewed as a more flexible principle with a wider application than has historically been the case in Scots law. Thus, one could argue that up until recently, Scots law lacked a doctrine corresponding to the first of the election categories outlined in Halsbury. It is possibly surprising that approbation and reprobation have been used so infrequently in Scottish cases considering how readily they have

<sup>2</sup> <https://www.lexology.com/library/detail.aspx?g=f6a71fb6-10ab-479f-98b0-d260b5ceea80>

been applied in English cases over time. It is noteworthy that the English courts have acknowledged the Scottish origins of the doctrine, and in that regard, their acceptance of its application in principle in Redding Park and Highlands and Islands Airports (and subject to any appeal in these two cases) may reflect the Scottish courts catching up. Although it can be viewed as pragmatic, the Scottish courts' acceptance of the doctrine's expansion beyond its customary application seems reasonable and fair.

### III. HOW IS THE DOCTRINE DIFFERENT FROM RES JUDICATA?

In the case of *Yamunabai Purushottam Deogirikar v. Mathurabhai Nilkanth Choudhuri*<sup>3</sup>, the observation of the Bombay High Court has made out the difference between doctrine of approbate and reprobate and res judicata. It is observed that doctrine of res judicata applies in a case where the proceedings have reached a definitive conclusion. This doctrine bars the same set of facts to be disputed by the parties twice. The final judgment binds the parties to each other and the parties operating in any ensuing lawsuit. It prevents the judiciary from deciding upon the same issue again. Whereas the doctrine of approbate and reprobate operate against the parties to a suit from pleading or proving contradictory facts.

### IV. APPLICATION OF THE DOCTRINE IN TAXATION CASES:

The doctrine has found its home in the Indian judicial system as it has also become the subject of various judicial decisions in taxation law.<sup>4</sup> When someone must decide between two stands or positions, the notion of approbate and reprobate is applicable. The individual in question, after acknowledging one position cannot choose to adopt the other stand, or position in order to profit from both after claiming or acknowledging the first.

When the theory is applied in tax proceedings, it frequently addresses scenarios in which taxpayers try to get a favorable tax status while still denying their responsibilities. Several legal objections have been made against this biased strategy. The implementation of this doctrine is essential to sustaining the credibility, coherence, standardization, and equity of the tax system. The doctrine has been invoked in the following scenarios.

- In situations where the reporting of income by the assessee is inconsistent

In order to receive advantageous tax treatment, taxpayers may initially classify income as under one head such as capital gains but then try to reclassify it if the situation becomes disadvantageous in order to lower their tax obligation. Such contradictory positions are prohibited by the use of the doctrine. In certain cases, the department is also prohibited from reclassifying income as an effort to bring such income into the tax bracket. The taxpayers sometimes adopt contradictory stances regarding their eligibility to receive input tax credit claims in GST, the doctrine prevents them from doing so.

In the case of *S. K. Thakar and Co. v. Commissioner of Income Tax*, the taxpayer had initially accepted certain expenditures as revenue expenses, which resulted in a decrease in their taxable income for that specific year. In the subsequent year, they argued that the same expense ought to be classified as a capital expense, which would have additional tax advantages. The court held that they were bound by their initial election and had to maintain consistency.

<sup>3</sup> [https://blog.iplayers.in/landmark-judgements-on-the-doctrine-of-approbate-and-reprobate-in-india/#Hemanta\\_Kumari\\_Devi\\_v\\_Parasanna\\_Kumar\\_AIR\\_1930\\_Cal\\_32](https://blog.iplayers.in/landmark-judgements-on-the-doctrine-of-approbate-and-reprobate-in-india/#Hemanta_Kumari_Devi_v_Parasanna_Kumar_AIR_1930_Cal_32)

<sup>4</sup> Analysing the Doctrine of "Approbate & Reprobate" in Indian Trade Mark Law, LexOrbis, <https://www.lexorbis.com/analysing-the-doctrine-of-approbate-reprobate-in-indian-trade-mark-law/#:~:text=The%20doctrine%20of%20approbate%20and%20reprobate%20applies%20in%20a%20situation,to%20gain%20benefit%20from%20both.>

- Under section 139 and section 147 of the act

When the income tax authorities begin proceedings under Section 147 of the Income Tax Act, which deals with the reopening of assessments, the doctrine has frequently been applied in cases where a taxpayer first fails to file an income tax return (approbate) but later claims that their income does not fall within the taxable bracket (reprobate). In these situations, the courts have ruled time and again that a taxpayer cannot show support by being silent and subsequently show disapproval by contesting the tax obligation.

<sup>5</sup>In *Commissioner of Income Tax v. Smt. P.K. Kochammu Amma*, In the initial assessment, the taxpayer had neglected to reveal specific income. Later, in a subsequent year, they claimed that the income was exempt. The Kerala high court by utilizing this doctrine held that this was not permitted by law.

- Inconsistent or fraudulent claiming of deductions and credit:

When confronted by tax officials, taxpayers may later retract any deductions or credits they initially claimed on their tax forms. The doctrine prevents the taxpayers from taking advantage of credits or deductions and then later denying their eligibility.

For instance, in the 1998 case of *Bajwa v. Commissioner*, the taxpayer first claimed deductions for business expenses but then made an attempt to retract those claims during an audit. The court decided in favor of consistency after applying the concept.

- The application of the doctrine is further understood by analyzing its implications in decided case laws

CIT v. V. MR. P. Firm Muar,

Background of the case:

In the course of the Second World War, Japan invaded Malaya in February 1942 and occupied it until September 1945. Although both the dollar and Malayan currencies were in use when Japan introduced the Japanese currency which started to lose value in January 1963. Due to this, debts that were settled and paid for with such money ultimately resulted in a loss for the creditors. When the British government reoccupied Malaya in 1945, Japanese currency was replaced with Malayan currency as legal currency. During the Japanese occupation of Malaya, Indian nationals conducting business experienced losses and negative consequences.

Facts:

<sup>6</sup>To assist these Indian businesses, the Government of India published a notification in 1947 outlining an initiative to provide relief to Indian citizens doing business in Malaya, and the Central Board of Revenue provided further guidance on the scheme. The process permitted such Indian nationals to deduct their losses from the 5 Assessment Years (from 1942-43 to 1946-47) from their profits from the 1942-43 and 1941-42 Assessment Years.

The Debtor and Creditor (Occupation Period) Ordinance No. XLII was passed by the Malayan Legislature in 1948. The Ordinance carried the effect of reviving the debt in proportion to the depreciation of Japanese currency in comparison to Malayan currency as specified in the schedule, such that payment in Japanese currency would only be a legal discharge of debt to the extent of such revaluation. The creditor's right to recover the debt to the amount specified, as well as the debtor's obligation to pay it, is reinstated.

Case before income tax tribunal:

The income tax officers stated that the receipt of additional amounts under the ordinance was in fact liable to tax. They further decided that no deduction was admissible in the case of an assessee who was a debtor because the sums paid constituted just capital repayment and not business expenditure. On appeal to the Appellate Assistant Commissioner, it was determined that the assessee's revenues for the revived loans were the only realization of the initial sums borrowed and, thus, could not be considered income. In the case of receipts, the Tribunal held that the assessee indirectly wrote off the debts to them by claiming benefits under the scheme and

<sup>5</sup> <https://www.courtktuchery.com/Judgement/Search/t/275019-commissioner-of-income-tax-kerala>

<sup>6</sup> Tanvi Srivatsan, taxguru, <https://taxguru.in/income-tax/case-study-cit-v-v-mr-p-firm-muar-1965-1-scr-815.html>

including all its cash and bank balances in the Malayan business as part of the losses incurred therein, and thus the recoveries under the Ordinance were only a subsequent realization of the written-off bad debts and, thus, assessable to income tax.

#### Issues:

1. Whether amounts recovered from debtors by creditors who accepted the arrangement under the Ordinance were subject to income tax?
2. Could the debtors claim the payments that they made as deductions?

#### Assessee's Contention:

The assesses argued that as they chose to adopt the scheme and benefited from it, and as a consequence agreed to exclude their discharged debts from the assets side of the balance sheet on the proviso that any later recoveries would be taxable revenue. They argued that they are now barred under the concept of "approbate and reprobate," and that the revenue they obtained from the realization of the revived obligations is not taxable.

#### Revenue Contention:

<sup>7</sup>The ordinance is only concerned with preoccupation capital debts and the debts for which the appeal has been sought are not such kinds of debts and therefore cannot be revived. The assessee who benefited from the Government of India's scheme, which included a condition that any subsequent recoveries would be treated as income, are now barred from claiming that the amounts realized towards the revived debts are not taxable under the principle of approbate and reprobate.

#### Judgment:

The assesses are not barred from pleading that income derived subsequently by the realization of revived debts as nontaxable income on the principle of "approbate and reprobate". The theory was simply a type of estoppel and could not be used to violate the statute. If an income is not taxable under the Income-tax Act, it cannot be taxed using estoppel or any other equitable doctrine.

#### Lakshman Prasad vs CIT

#### Facts:

<sup>8</sup>Lakshman Prakash, proprietor of Messrs. National Emporium, is the assessee who was assessed as the kartha Hindu undivided family in the assessment years 1940-41 and the following three years. For the tax year in question, the assessee submitted a return as an individual and not as the manager of a Hindu undivided family. On March 29, 1949, an Income Tax Officer assessed him as representing a Hindu undivided family without addressing his status or recognizing that the return was made by an individual. Because the Income Tax Officer had not discussed the issue of his status, the assessee filed an appeal, which was granted by the Appellate Assistant Commissioner.

The Income Tax Officer then reinvestigated the matter and, in an order dated January 24, 1952, assessed the petitioner as an individual after concluding that the income did not belong to the Hindu undivided family but to Laxman Prakash. Laxman Prakash then filed an appeal with the Appellate Assistant Commissioner, and two submissions were made on his behalf. The first submission was that, under Section 31 of the Act, the Appellate Assistant Commissioner had no jurisdiction to direct an inquiry and assessment on someone other than the person who had appealed, and thus the Income Tax Officer had no authority to assess Laxman Prakash as an individual. The second one was that the second assessment was made after the time limit specified in Section 34 of the Act. The Appellate Assistant Commissioner rejected both of these arguments, affirming the Income Tax Officer's assessment order and dismissing the appeal.

<sup>7</sup>IndianKannon, <https://indiankannon.org/doc/386457/#:~:text=The%20Commissioner%20and%20a%20debtor,debts%2C%20was%20not%20taxable%20income.>

<sup>8</sup> Juris Thelaws, <https://www.thelaws.com/Encyclopedia/Browse/Case?caseId=302691451000&title=lakshman-prakash-vs-commissioner-of-income-tax>

Application of the doctrine in the Judgement:

After taking the position in his returns that the income was liable to be taxed in his hands as an individual, the assessee can no longer argue that his assessment as an individual is illegal. He made representations to the Appellate Assistant Commissioner that the income should be assessed in his hands as an individual and obtained from him an order setting aside the assessment made on the Hindu undivided family and directing a new assessment after determining the appellant's status. He can no longer claim that he is not bound by the orders of the Appellate Assistant Commissioner.

**V. USAGE OF THE DOCTRINE IN THE UK, AND US AND ITS IMPLICATIONS IN OTHER LEGISLATIONS:**

The theory of approbate and reprobate is a legal notion that appears on occasion in the legal system of the United States as well as the United Kingdom. This law generally prohibits a party from taking contradictory positions in judicial processes, particularly when asserting and denying the legality of a specific document or transaction as well as matters in relation to taxation.

In Indian trademark law, the doctrine has been applied in cases analyzing two parties contradictory stand on the uniqueness as well as the dissimilarities in relation to competing trademarks.<sup>9</sup> In the case of Neon Laboratories Ltd. v Themis Medicare Ltd, it was determined that there is a form of estoppel by conduct that applies to a party who asserts that a mark or a prominent feature of a mark is common to the trade when the party itself had applied for registration of the mark. The second action disproves the first.

In the case of <sup>10</sup>Raman Kwatra & Anr. v M/s. KEI Industries Limited the court held that once a party had taken a position distinguishing its own mark from a mark cited in its examination report for the purpose of obtaining registration, it cannot later change its position and challenge the cited mark by approaching the court for an interim injunction against the cited mark's owner on the grounds that the marks were deceptively similar.

Section 35 of the Transfer of Property Act lays down the doctrine of election which has the same principle as the doctrine of approbate. This doctrine states that a person has the option to select one out of the two gifts conferred upon him. If they choose to elect one they have to completely relinquish the other.<sup>11</sup> In the case of Rungama vs Atchama the privy council held that a party cannot affirm as well as disaffirm the same transaction.

**VI.SUGGESTIONS AND RECOMMENDATIONS:**

The Application of the doctrine of approbate and reprobate is analyzed in this paper in detail with the help of decided case laws. The Authors are hereby pointing out certain recommendations for future research on this concept:

1. Further research can be carried on in this concept by comparing it with application of this doctrine in different jurisdictions including UK, US.
2. Application of this doctrine can be carried on in detail by analyzing it with various legislations like Property laws, Trademark laws etc.,

**VII.CONCLUSION:**

The doctrine has proven to be one of the fundamental aspects of the judicial system of our country that promotes fairness, and equity and disallows inconsistency in filing of income or returns in taxation cases during judicial proceedings. After reviewing some of the judgments delivered in India that highlight the doctrine of approbate and reprobate, we can conclude that the doctrine has a solid foundation in our jurisprudence. The application of the Doctrine of Approbate and Reprobate is not only limited to taxation cases but has also found home in various other legislations such as the Indian Trademark Law and the Transfer of property act. This doctrine has not only found its foothold in our country but it has also integrated itself into the judicial systems of various countries including the United Kingdom and the United States.

<sup>9</sup> Lexorbis.com, <https://www.lexorbis.com/analysing-the-doctrine-of-approbate-reprobate-in-indian-trade-mark-law/>

<sup>10</sup> Lexorbis.com, <https://www.lexorbis.com/analysing-the-doctrine-of-approbate-reprobate-in-indian-trade-mark-law/>

<sup>11</sup> Lawnotes, <https://www.lawnotes.co.in/2020/05/transfer-of-propertydoctrine-of-election.html#:~:text=The%20principle%20behind%20the%20doctrine,the%20property%20or%20the%20benefit.>