

HANDBOOK ON LAW OF CIVIL PROCEDURE IN INDIA



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Introduction:

The Code of Civil Procedure [CPC] 1908 is procedural or adjective law. This law is concerned with administering civil proceedings in the country. It deals with the enforcement of the liabilities and rights determined as per the regulations of the substantive law.

The Code of Civil Procedure [CPC] determines the Law that regulates the process to be followed in civil court. It is among the most important sections of procedural law.

Historical Background:

The Code of Civil Procedure [CPC] is an enactment from the pre-independence era. It was first enacted in 1859 to provide uniformity to Civil Procedure. The Legislative Council of India enacted it as Act No.8 of 1859. It underwent several amendments from 1860 to 1882. The code was re-enacted in 1908, after which it came into effect.

The Code of Civil Procedure [CPC] has undergone several amendments. But it has stood the test of time. It provides simple and efficient procedures for the Civil Courts to follow. The Code aids the Courts to deliver unbiased justice.

Scope of the Code:

The Code of Civil Procedure [CPC] is exhaustive as far as it concerns the matters under its direct jurisdiction. But the code is comprehensive

Decree, Judgment and Order

When a Court adjudicates a dispute, after the hearing, it has to either pronounce its decision by way of a decree or dismiss the case. Such decision is called Decree.

While arriving to such decision, the court will explain the grounds because of which the court came to such conclusion. Such grounds for the decision is called Judgment.

An **Order** is also a decision of the court but which will not come under the head 'Decree'. [12]

1. An order will not determine the rights or liabilities of the parties.
2. Any number of orders can be passed in one suit.
3. The Order can be passed on a suit as well as on application.
4. There are -
 - Appealable orders.
 - Non-appealable orders.

There are no second appeal for the **Appealable orders**.

To constitute a decree, there should be an adjudication by a court in which the rights or liabilities of the parties have been determined conclusively. It should have been formally expressed by the Court.

Jurisdiction

Jurisdiction means the authority through which a court entertain suits, appeals and applications, and the court administer justice according to the provisions of the law.

Jurisdiction of the Civil Court may be categorized as follows -

1. Territorial or Local Jurisdiction
2. Pecuniary Jurisdiction
3. Jurisdiction over subject matter
4. Original and Appellate Jurisdiction

Interlocutory Applications

Interlocutory applications are used in almost every civil proceeding. It is usually considered as an integral part of the suit.

An Interlocutory application can be filed by any party to the suit and is indicated by abbreviation 'I.A.' and consequently numbered.

Special Suits

In some cases, the plaintiff may not be able to pay the prescribed court fee due to poverty, etc. In such circumstances, to help such persons to

protect their rights, the Civil Procedure Code, 1908 has provisions under Order XXXIII to provide an exemption from the court fee. An **Indigent** person is the one who is poor and cannot afford to pay the court fee. This kind of suits are also called as “Pauper Suits”.

“Inter-pleader Suits” is not defined in the Code of Civil Procedure, 1908. ‘Inter-plead’ generally means to litigate with each other to find a solution concerning a third party.

“Inter-pleader” suits, the dispute is not between the plaintiff and defendants. In fact, the plaintiff in such suits has no interest in the subject matter of the dispute. The dispute is between the defendants and they inter-plead against each other. [16]

“Inter-pleader” suits, the plaintiff must be in lawful possession of a property belonging to some other person. The property may be movable or immovable, and the plaintiff must not have any interest in the property. There shall be two or more claimants for the property and the plaintiff must be ready to hand over the property to the right claimant based on the decision of the court.

Appeals & Other Important Provisions

When a suit is heard by the trial court, the trial court enquires the issue, arrives at a conclusion and pronounces a decree either in favor of the plaintiff or the defendant.

In such suits, the aggrieved party may prefer to appeal against the decision of the trial court. The term '**appeal**' is not defined in Civil Procedure Code, 1908. An Appeal cannot be claimed as the inherent right and can be preferred only where it is expressly provided by the statute. But any person can bring in a suit of civil nature as it is an inherent right.

Reference: Section 113 and Order XLVI of the Code of Civil Procedure, 1908 deals with reference. Reference means referring a case to the higher court to seek the opinion of the higher court when there is a doubt in the question of law.

Review: Section 114 and Order XLVII of the Code of Civil Procedure, 1908 deals with the **Review**. According to this, a Court may reconsider a decision given by the same court. But a court cannot review its decision *Suo moto*. [17]

Revision: Section 115 of the Code of Civil Procedure, 1908 deals about **Revision**. The Higher Courts have revision jurisdiction and can call for the record of any case which is already decided. This power is given for the efficient exercise of supervisory jurisdiction of Higher Courts.

Amendments of 1999 and 2002

The object of the amendments is to ensure fair and natural justice and providing a speedy remedy by eliminating untoward delay in disposal of the cases.

- **Summons should be delivered** to the defendant within 30 days from the date of filing of the suit.
- The **written statement should be filed** within 30 days. The court may extend this period up to 90 days. [11]
- The **penalty** for non-appearance and default has been increased to Rs.5000/-
- **In case of decree** for payment, if the judgment debtor does not pay, he can be detained in civil prison. If the default is for payment up to Rs.2000, he will not be detained in civil prison.
- **In case of attachment** while executing a decree, the monthly salary up to Rs.1000/- and two third of the remaining salary exceeding Rs.1000/- will not be attached.
- The amendments paved the way to the new and efficient methods for settlement of disputes, like Arbitration, Conciliation and Mediation. Lok Adalat is a very good example for this.

- There is a **provision for the defendant** to get compensation for the expenses incurred, loss or injury including the loss of reputation caused to him because of his arrest or attachment of his property.
- After the amendments, if the value of subject matter of the suit is below Rs.1000, such disputes cannot be appealed.
- If the case is **adjudicated by a single judge** of a high court whether in the original or appellate jurisdiction, no appeal will be entertained against the order of the single judge of the high court.
- There is **no second appeal** if the subject matter of the suit is for the recovery of money not exceeding Rs.25,000/-
- The Court may adjourn the **framing of issues** for a period not exceeding seven days while examining the witnesses or examining the documents presented before the court.
- Any party to the suit will not be given more than 3 adjournments during the hearing of any suit.
- The Court will pronounce the judgment once the trial is over. The Court shall endeavor to pronounce judgment within 30 days from the conclusion of hearing. But, **in the case of exceptional or extraordinary circumstances**, the court may fix a

day beyond 30 days but before 60 days from the conclusion of the hearing.

Conclusion

To enable the courts to deliver impartial and unbiased justice, the Code of Civil Procedure, 1908 provides simple and clear procedures to be followed by the Civil Courts. In case of no provisions relating to some issue or matter, the court will not be able to decide efficiently.

Hence the Code of Civil Procedure, 1908 incorporated the provisions for inherent powers. When there is no legislation, the court, in the interest of justice may exercise the discretionary power by acting beyond the powers conferred on them under the Code of Civil Procedure. It is called the **Inherent powers of the Court**.



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